

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1039/MUM/2023
(Assessment Year: 2015-16)**

JIK Industries Limited,
Oriental Business Centre 8,
Rajbahadur Mansion Ambala
Doshi Marg, Fort,
Mumbai - 400001
[PAN: AABCJ2982J]

..... **Appellant**

Deputy Commissioner of Income Tax,
Circle 2(2)(1), Mumbai,
Aayakar Bhawan, Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Sunil Talati
For the Respondent/Department : Shri Ankush Kapoor

Date

Conclusion of hearing : 06.07.2023
Pronouncement of order : 22.09.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 17/03/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2015-16, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the penalty order, dated 29/06/2018, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

1. *"The penalty order passed by Ld. A.O. and confirmed by Ld. CIT(A) is bad in law as while issuing notice u/s. 271(1)(c) of the Act, A.O was not sure whether to levy penalty on concealment of Income or furnishing of inaccurate particulars of Income. Hence the penalty order u/s. 271(1)(c) of the Act deserves to be considered as void ab initio. The same be held now.*
 2. *The Ld. CIT(A) has erred in confirming impugned penalty of Rs 55,34,03,602/- under section 271(1)(c) of the Act. It is submitted that on the facts of the case and in view of the legal position there was absolutely no concealment of income or furnishing any inaccurate particulars of income and hence the penalty so confirmed deserves to be deleted. The same be deleted now.*
 3. *Without prejudice to the above, the Ld. CIT(A) has confirmed the impugned penalty order passed by Ld. A.O. without appreciating the bonafide explanations of the appellant and as such, the Ld. CIT(A) ought not to have confirmed the impugned penalty under section 271(1)(c) of the Act. It is prayed that impugned penalty so confirmed be deleted in the interest of justice.*
 4. *The order passed by the learned CIT(A) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now."*
3. The relevant facts, in brief, are that Appellant filed return of income for Assessment Year 2015-16 on 30/09/2015 declaring 'Nil' income and claiming carried forward losses of INR 158,42,27,177/-. The case of the Appellant was selected for 'limited scrutiny' under Computer Assisted Scrutiny Selection (CASS). On perusal of return of income and audited financial statements the Assessing Officer noted that expenses of INR 89,30,00,281/- under the head prior period expenses and provision for diminution in the value of the investment of INR 43,00,05,953/- has been debited to the Profit & Loss Account. Since according to the Assessing Officer it prima facie appeared that the aforesaid expenses were not incurred for the purpose of business during the relevant previous year, approval was obtained for conversion of limited scrutiny to complete scrutiny and notice was issued under Section 143(2) and

142(1) of the Act to the Appellant. In response, the Appellant filed letter dated 23/11/2017 furnishing copy of revised computation of income wherein the Appellant suo moto disallowed following expenses under Section 37 of the Act claiming that deduction for the same was claimed on account of inadvertent mistake by the Chartered Accountant of the Appellant while filing original return of income on 29/09/2015:

<i>SNo.</i>	<i>Particulars</i>	<i>Amount (INR)</i>
1	<i>Prior period expenses</i>	<i>89,30,00,281</i>
2	<i>Provisions for diminution in the value of investment</i>	<i>43,00,05,953</i>
3	<i>Sundry balances written - off</i>	<i>25,72,68,331</i>
4	<i>Extraordinary items</i>	<i>4,78,61,950/-</i>

4. In the revised computation it was also claimed that balances written off amounting to INR 25,72,68,331/- were in the nature of bad debts written off and therefore, allowable as deduction under Section 36(1)(vii) read with Section 36(2) of the Act, though the same was voluntarily disallowed. According to the Appellant the time for filing revised return of income had expired, and therefore, the Appellant filed revised computation of income during the assessment proceedings. Further, since the Appellant-Company had huge brought forward losses, there was no loss of Revenue on account of inadvertent mistake committed while filing the original return of income.
5. Vide order dated 22/12/2017, the Assessing Officer completed assessment under Section 143(3) of the Act at income of INR 3,98,39,552/- as against returned loss of INR 158,42,27,177/- (as per the return of income) after making, inter alia, disallowances of expenses not attributable to the business aggregating to INR 162,81,36,515/-. Penalty proceedings were also initiated against the

Appellant under Section 271(1)(c) of the Act as notice under Section 274 of the Act was issued to the Appellant on 22/12/2017. The penalty proceedings culminated into penalty order, dated 29/06/2018, whereby a penalty of INR 55,34,03,602/-, being 100% of tax on disallowance of INR 162,81,36,515/-, was levied under Section 271(1)(c) of the Act.

6. The appeal preferred by the Appellant before the CIT(A) against the above penalty order was dismissed by the CIT(A) vide order dated 17/03/2023.
7. Being aggrieved, the Appellant has preferred the present appeal before the Tribunal.
8. We have heard the rival submissions. The primary contention raised on behalf of the Appellant before the CIT(A) as well before the Tribunal was that there was total non-application of mind by the Assessing Officer in as much as the Assessing Officer levied penalty under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income whereas in the notice issued section 274 read with Section 271(1)(c) of the Act the Appellant was asked to show cause why penalty should not be levied for concealing particulars of income. The penalty levied is for a charge different than that initiated, and therefore, the impugned penalty is bad in law and accordingly, not tenable. In addition, it was also contended on behalf of the Appellant that penalty could not have, even otherwise, been levied under Section 271(1)(c) of the Act since the Appellant has voluntarily offered income to tax. In response, it was contended by the Ld. Departmental Representative that there was no infirmity in the order of penalty passed by the Assessing Officer. He submitted that in the assessment order the Assessing Officer had recorded that the Appellant has furnished inaccurate particulars of income leading to concealment of income. Further, while levying

penalty also the Assessing Officer has clearly stated that penalty has been levied for furnishing inaccurate particulars of income leading to concealment of income. Since there was concealment of income the notice issued under Section 274 of the Act cannot be flouted. As regards merits of levy of penalty, the Ld. Departmental Representative contended that the revised income statement was filed by the Appellant only after limited scrutiny was converted into complete scrutiny, therefore, it cannot be said that there was voluntary disclosure. In rejoinder, the Ld. Authorised Representative for the Appellant submitted that the time for filing revised return had expired and therefore, the Appellant had to file revised statement of income during the assessment proceedings. Further, it was also submitted that there was no loss of revenue as the Appellant had accumulated brought forward losses. Both the sides cited judicial precedents in support of their respective contentions.

9. We have considered the rival contention, perused the material on record including the judicial precedents cited during the course of hearing and considered the position in law.
10. On perusal of Assessment Order, we find that in paragraph 4.8 of the Assessment Order, the Assessing Officer has directed initiation of separate penalty proceeding in the following manner:

"4.8 In view of the foregoing discussion, the amount of Rs 162,81,36,515/- is added to total income of the assessee. Further, as evident from the discussion above, the assessee has failed to make true and full disclosure pertaining to income at the time of filing the return of income. It is the purpose of the assessment proceedings to identify such instances of concealment of income Hence, separate penalty proceedings u/s 271(1)(c) are initiated for furnishing of inaccurate particulars which has resulted in concealment of income."
11. Thus, in the assessment order, while recording satisfaction for initiating penalty proceedings under Section 271(1)(c) of the Act, the charge

stated is furnishing of inaccurate particulars of income. Whereas on perusal of notice, dated 22/12/2017, issued under Section 274 of the Act, we find that the charge against the Appellant stated therein is that the Appellant had concealed the particulars of income. Similarly, in notice dated 25/06/2018, sent to the Appellant it has been stated that the penalty proceedings in the case of the Appellant were for concealed particulars of income. The relevant extract of the aforesaid notice read as under:

"In connection with the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for A.Y. 2015-16 in your case for concealment of particulars of your income, You are hereby requested to appear before me on 26.06.2018 at 11.45 A.M. and show cause why an order imposing penalty on you should not be made." (Emphasis Supplied)

12. However, on perusal of penalty order impugned by way of present appeal, we find that the Assessing Officer has levied penalty on the Appellant for furnishing inaccurate particulars of income.
13. From the above, it is clear that while the Assessment Order records satisfaction of the Assessing Officer that the Appellant has furnished inaccurate particulars of income, the notice issued under Section 274 of the Act state that the Appellant has been charged with concealment of particulars of income. However, while passing the penalty order, penalty has been levied on the Appellant for furnishing inaccurate particulars of income.
14. We note that in the case of Commissioner of Income Tax Vs. **Manjunatha Cotton & Ginning Factory : [2013] 359 ITR 565 (Karnataka)** the Hon'ble Karnataka High Court has made following observations regarding issuance of notice under Section 274 of the Act:

"Notice under section 274

59. As the provision stands, the penalty proceedings can be initiated on various grounds set out therein. If the order passed by the authority categorically records a finding regarding the existence of any

said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation 1 or in Explanation 1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in section 271 should be made known about the grounds on which they intend imposing penalty on him as section 274 makes it clear that the assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100 per cent. to 300 per cent. of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under section 274 should satisfy the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended if the show-cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.

60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out the satisfaction of the existence of the grounds mentioned in section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what the assessee was called upon to meet. Otherwise, though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend the principles of natural justice and cannot be sustained. Thus, once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the

basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.

61. xx xx

62. xx xx

CONCLUSION

63. *In the light of what is stated above, what emerges is as under:*

(a) Penalty under section 271(1)(c) is a civil liability.

xx xx

(p) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income

(q) Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law.

(r) The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

(s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.” (Emphasis Supplied)

15. The above judgment of Hon’ble Karnataka High Court was taken into consideration by the Full Bench of the Hon’ble Bombay High Court in the case of **Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum : 434 ITR 1 (Bombay)** wherein it was held as under:

"Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned

in Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness." (Emphasis supplied)

16. On perusal of the above, it can be seen that the penalty notices put the Appellant to notice about the charge of concealment of particulars of income whereas in the impugned penalty order penalty under Section 271(1)(c) of the Act has been levied for furnishing inaccurate particulars of income. Thus, the Appellant has not been informed about the charge/grounds on which penalty under Section 271(1)(c) of the Act is sought to be levied through statutory notice issued under Section 274 of the Act and therefore, the test laid down by the Hon'ble Bombay High Court in the case of Mohd. Farhan A Shaikh (supra) is not satisfied. Since, in the present case the penalty proceedings were initiated under one limb of Section 271(1)(c) of the Act for furnishing inaccurate particulars of income whereas the penalty has been levied after finding the Appellant guilty under the other limb of Section 271(1)(c) of the Act for furnishing inaccurate particulars of income, the penalty order, dated 29/06/2018, levying penalty of INR 55,34,03,602/- under Section 271(1)(c) of the Act cannot be sustained in view of the judgment of the full Bench of the Hon'ble Bombay High Court in the case of Mohd. Farhan A Shaikh (supra). Accordingly, the penalty order, dated 29/06/2018, levying penalty under Section 271(1)(c) of the Act is quashed as being bad in law. In view of the

aforesaid, the contentions advanced by both the sides relating to levy of penalty on merits, having been rendered academic, are not require to be adjudicated upon and therefore, left open.

17. In view of the above, Ground No. 1 raised by the Appellant is allowed while Ground No. 2 and 3 raised by the Appellant are dismissed as being infructuous.

In result, the appeal preferred by the Assessee is allowed.

Order pronounced on 22.09.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 22.09.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
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