

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI
BEFORE SHRI G.S PANNU, HON'BLE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
ITA Nos.1317 to 1322/Del/2023
Assessment Years: 2010-11 to 2015-16

Anand Kumar Jain, C-6/46, Sector-08, Rohini, New Delhi 110085 PAN AAEPJ 1642 F	vs.	The JCIT (OSD), Central Circle-26, Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Adv. Ms. Supriya Mehta, CA Shri Amit Kr. Sharma, CA
Revenue For :	Shri Kanv Bali, Sr. DR

Date of Hearing :	10.10.2023
Date of Pronouncement :	12.10.2023

ORDER

PER BENCH:-

The present appeals have been filed by assessee against the orders of Id. CIT(A)-29, New Delhi, dated 24.03.2023 for A.Ys. 2010-11 to 2015-16.

2. Since, the issues involved in all these appeals are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 1317/Del/2023, following grounds have been raised by the assessee:

1. On the facts and circumstances of the case, the order passed by the Learned CIT(A) is bad both in the eyes of law and on fact.

2. On the facts and circumstance of the case, the Learned CIT(A) has erred both on facts and in laws in confirming the penalty of Rs.3,71,528/- levied by the AO under section 271(1)(c) of the Act.

3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the penalty levied on the addition of Rs. 12,02,355/- on account of unaccounted commission income made by the AO on estimation basis invoking the provision of section 68 of the Act.

4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the penalty and rejecting the contention of the assessee that on an addition made on the basis of estimation no penalty under section 271(1)(c) can be levied.*

5. *On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming penalty levied by the AO despite the fact that the addition itself is not tenable in law.*

6. *On the facts and circumstances of the case the learned CIT (A) has erred both on facts and in law in ignoring the contention of the assessee that the penalty proceedings are independent proceedings, as such mere addition does not lead to levy of penalty.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in levying penalty despite the fact that the notice issued by AO u/s 274 read with section 271(1)(c) of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty levied by the AO rejecting the contention of the assessee that penalty was levied without giving finding on merits of the case as concealment of income as well as furnishing of inaccurate particulars of income.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in levying penalty despite the fact that there is neither concealment of income nor furnishing the inaccurate particulars of income by the assessee.*

10. *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the penalty order passed is bad in the eyes of law as the same was passed in violation of circular no. 19/2019 issued by CBDT which mandates that no order shall be passed without there being Valid Document Identification Number (DIN).*

4. This issue of specifying the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income in the penalty notice has been settled by the judgments of various Hon'ble High Courts. On this issue, we are guided by the following judgments:

1) *Karnataka High Court: CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274 should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.*

2) *Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271(1)(c): Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice u/s 271(1)(c) of the Income Tax Act, order is bad in law. Assessee must be informed of the ground of*

the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

3) The Hon'ble jurisdictional Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 of 2019 , reiterated that notice under section 274 should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.

4) The aforesaid principle has been reiterated in the in the case of CIT vs. SSA'S Emerald Meadows: 73 taxmann.com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]

5. Hence, respectfully following the order of the Hon'ble Jurisdictional High Court, since the AO has not been specified u/s 274 as to whether penalty is proposed for alleged 'concealment of income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

6. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 12.10.2023

Sd/-
(G.S PANNU)
PRESIDENT

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 12th October, 2023

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi