

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 172/Asr/2022**  
Assessment Year: 2012-13

Sh. Rajiv Mehra,  
2812, Sirki Bandan  
Bazar, Amritsar 143001

[PAN: ACCPM 9210C]

**(Appellant)**

Vs. ACIT/DCIT,  
Central Circle, A  
Amritsar

**(Respondent)**

Appellant by : Sh. Ashwani Kalia, CA  
Respondent by : Sh. S. M. Surendranath, Sr. DR  
Date of Hearing : 09.11.2023  
Date of Pronouncement : 22.11.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 13.06.2022 in respect of Assessment Year: 2012-13 wherein the appellant has challenged the imposition of penalty amounting to Rs.8,99,808/- u/s 271(1)(c) of the Act.

2. At the time of hearing, the Id. counsel for the assessee submitted that there was a delay of 10 days in filing the physical copy of the appeal memo with the registry. Although, the assessee has filed the appeal memo online in time, therefore, there was no delay in filing the appeal with the registry. He requested that the said delay may be condoned in filing the physical copy of the appeal memo.

3. The Id. DR has no objection to the request of the assessee and hence, the said short delay of 10 days condoned and the appeal is admitted on merits.

4. The Id. counsel contended that the penalty is confirmed by the Id. CIT(A) without application of mind as the Id. Assessing Officer has imposed the penalty by issuing a notice u/s 271(1)(c) r.w.s. 274 dated 06.12.2019 without specific charge by striking of one of the two limbs mentioned in the said notice (APB pg. 4). The copy of the notice is reproduced as under:

**NOTICE UNDER SECTION 271(1)(C) READ WITH SECTION 274 OF THE  
INCOME TAX ACT, 1961**

PAN:

Office of the,  
Asstt. Commissioner of Income-tax,  
Central, Circle, Amritsar.

To

Dated: 06.12.2019.


Sh. Rajiv Mehra  
2812, Sirki Bandan Bazar,  
Amritsar

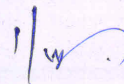
Whereas in the course of Proceedings before me for the assessment year 2012-13 it appears to me that:

1. Have without reasonable cause to furnish your return of income, which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 of which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income tax Act, 1961 or have without reasonable cause failed to furnish it within the time allowed and the manner required by me said section 139(1) or by such notice.
2. "Have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Income-tax Act, 1933 or under section 142/143(2) of the Income-tax Act, 1961".
- ✓ 3. "Have concealed the particulars of your income or furnished inaccurate particulars of such income."

You are hereby requested to appear before me at Amritsar on 23.12.2019 at 03:30 P.M and show cause why an order imposing penalty upon you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1) (c).



  
 (Hriday Narayan Rai)  
 Assistant Commissioner of Income-tax,  
 Central Circle, Amritsar.



5. The Id. AR argued that the aforesaid notice issued u/s 274 per se is erroneous as no specific charge/satisfaction of the AO is mentioned in the notice as to whether it was for a concealment of the particulars of income or for having furnished inaccurate particulars of income by the assessee. Thus, the penalty proceedings are invalid and void ab-initio. In support, he placed reliance on the decision of co-ordinate Amritsar Bench in the case of Rajinder Kumar Sharma v. ITO 2(4) Udhampur in ITA No. 175/Asr/2019 dated 11.08.2022 where on the same ground, the penalty levied u/s 271(1)(c) was deleted by the Tribunal.

6. Per contra, the Id. DR relied on the impugned order.

7. We have heard both the sides, perused the material on record, the impugned order and case law cited before us. Admittedly, the AO has issued notice u/s 271(1)(c) r.w.s. 274 per se defective because he has neither mentioned specific charge/satisfaction in the said notice as to whether it was issued for having concealed the particulars of income or for having furnished inaccurate particulars of income by the assessee. In our view, the penalty levied by the AO and confirmed by the Id. CIT(A) is bad in law.

8. The co-ordinate Amritsar Bench in the case of Prem Pal Gandhi in ITA No. 455/Asr/2017 dated 13.05.2022 has deleted the penalty on identical facts by following Hon'ble Bombay High Court in the case of "Mohd. Farhan A. Shaikh v. DCIT", [2021] 125 taxmann.com 253 (Bombay). The relevant part of the judgment is extracted as under:

*"11. In the case on hand, we find that at the first instance, while replying to the penalty show cause notice dated 17/08/2012, the assessee raised a specific plea that there was no concealment of income, that he had not furnished inaccurate particulars of income and that the notice was not proper. Therefore, the phraseology, which was adopted by the assessee, if read as a whole, would clearly show that he had objected to the issuance of the notice and as there was no basis for issuance of the notice under Section 271(1)(c) of the Act, both limbs in the said provision do not get attracted.*

*12. In the case of "Mohd. Farhan A. Shaikh Vs. DC-IT", [2021] 125 taxmann.com 253 (Bombay) held that where assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), a mere defect in notice, not striking off irrelevant matter would vitiate penalty proceedings vide Para 188 by observing as under:*

*"188. We may, in this context, respectfully observes that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. Therefore, Dilip N. Shroff Case (supra) disapproves of the routine, ritualistic practice of issuing omnibus show-ccuse notices. That practice certainly betrays non- application of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice."*

13. Following Hon'ble Bombay High Court, in the case of "Mohd. Farhan A. Shaikh Vs. DCIT", (Supra) we delete the penalty levied by the AO and confirmed by CIT (A). We direct the AO accordingly."

9. Following co-ordinate Bench on the identical facts, we hold that the penalty levied by the AO and confirmed by the Id. CIT(A) is invalid and void ab-initio. Accordingly, we delete the penalty levied as void ab-initio.

10. In the result, the appeal of the assessee is allowed.

*Order pronounced in the open court on 22.11.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy  
By Order