

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “DB” “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

ITA No.100/DDN/2019

[Assessment Year : 2010-11]

Mayank Singh Mehra Oak Over Cottage, Mallital, Nainital, Uttarakhand PAN: ABIPM5085E	v s	ITO Nainital Uttarakhand
APPELLANT		RESPONDENT
Appellant by	Sh. Sharad Kumar Vishnoi, Adv	
Respondent by	Sh. A. S. Rana, Sr. Ld. DR	
Date of Hearing	22.11.2023	
Date of Pronouncement	23.11.2023	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals), Haldwani, dated 16/05/2019 pertaining to the Assessment Year 2010-11. The assessee has raised the following grounds of Appeals.

“1. The primary burden of proof, thereof, is on the revenue. The Statute requires a satisfaction on the part of the assessing officer. He is required to arrive at a

satisfaction so as to show that there is primary evidence to establish that the assessee had concealed the amount of furnished inaccurate particulars and this onus is to be discharged by the department (see D.M Manasvi v/s C.I.T. (1973)3 Scc 207)"

"In the same case, the hon'ble Supreme Court of India held that merely because the assessing office is satisfied during the course of assessment proceedings that assessee has concealed particulars of income or filed inaccurate particulars, then levy of penalty will not be automatic. The Hon'ble Supreme court of held as under (head notes) "Clause (c) of section 27(1) Income Tax Act. 1961 categorically states that penalty would be livable if the assessee conceals particulars of his Income or furnishes Inaccurate particulars thereof. But by reason of such concealment of furnishing of inaccurate alone, the assessee does not ipso facto becomes liable for penalty. Imposition of penalty is not automatic. Not only is the levy of penalty directionary in nature but the direction is also required to be exercised on the part of the assessing officer keeping the relevant factors in mind. Some of those factors, apart from being inherent in the nature of penalty proceedings, inhere on the face of the statutory provisions. Penalty proceedings are not to be initiated merely to

harass the assessee. The approach of the Assessing officer in this Behalf must be fair and objective.

"concealment of income "and "furnishing inaccurate particulars" Are different. Both concealment and furnishing of inaccurate particulars refer to deliberate acts on the part of the assessee. A mere omission of negligence would not constitute a deliberate act of suppression very of suggestion falsi."

2. Briefly stated facts are that, in this case the assessment was reopened on the basis of cash deposited in the bank account amounting to Rs. 11,56,000/- and transaction related to immovable property amounting to Rs. 28,00,000/-. In response to the statutory notices, the Ld. Representative of the assessee attended the proceedings. The Assessing Officer finding that the assessee failed to explain the source of investment of Rs. 8,99,067/-, he added this amount. Further, he made addition out of low house hold withdrawal and non disclosure of interest on fixed deposit. Thus, he assessed income at Rs. 11,06,430/- and also initiated proceedings u/s 271(1)(c) of the Income Tax Act, 1961 (in short the

'Act') separately. Thereafter the Assessing Officer imposed a penalty of Rs. 4,53,878/- at the 200% of the tax.

3. Aggrieved against this, the assessee preferred appeal before the Ld.CIT(A) who dismissed the Appeal, now the assessee is in Appeal before this Tribunal.

4. The Ld. Counsel for the assessee apropos to the Grounds of Appeal submitted that the penalty proceedings are defective on account of the fact that the notice u/s 271(1)(c) of the Act do not disclose specific charge further he submitted that the Assessing Officer levied penalty @ 200% despite the fact that there was no concealment by the assessee. The action of A.O. is illegal and unjustified.

5. On the other hand, the Ld. Departmental Representative supported the orders of the authorities below.

6. We have heard the rival submissions and perused the material available on record. The assessee has placed on record the notice dated 26/03/2015 issued by the Assessing Officer u/s 271(1)(c). It is transpired from the said notice, that the Assessing Officer has

not specified the charge. The law is well settled now that the Assessing Officer is required to specify the charge. The issuance of notice is not a merely a formality but it should be as per the prescribed procedure of law. The Hon'ble High Court of Delhi in the case of PCIT Vs. Sahara India Life Insurance Company Ltd. (2021) 432 ITR 84 held as under:-

“21. The respondent had challenged the upholding of the penalty imposed under section 271(1)(c) of the Act, which was accepted by the Income-tax Appellate Tribunal. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 (Karn) and observed that the notice issued by the Assessing Officer would be bad in law if it did not specify in which limb of section 271(1)(c) the penalty proceedings had been initiated under, i. e, whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment sequent order in CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241 (Karn), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by an order dated August 5, 2016 (CIT v. SSA's Emerald Meadows [2016] 386 ITR (St.) 13 (SC)).

22. On this issue again this court is unable to find any error having been committed by the Income-tax Appellate Tribunal. No substantial question of law arises.”

7. In the light of the above binding precedent the notice issued by the Assessing Officer is defective on account of fact that the charge is not specific. Hence, on the basis of such defective notice the penalty cannot be sustained we, therefore, direct the Assessing Officer delete the penalty. The Grounds raised in this Appeal are allowed.

8. In the result, the Appeal of the assessee is allowed.

Order pronounced in the open Court on 23rd November, 2023

Sd/-

(M BALAGANESH)
ACCOUNTANT MEMBER
23/11/2023

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

R.N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

