

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.753/Bang/2023
Assessment Year: 2015-16

DCIT Circle-1(1) Hubli	Vs.	Shri Chandrashekhar Kommi Plot No.59F, Shakti Colony 2 nd Stage Vishweshwar Nagar Hubli-580 032 Karnataka PAN NO : AMKPK5722D
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaina Bhatia, A.R.
Revenue by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	12.12.2023
Date of Pronouncement	:	21.12.2023

O R D E R

PER MADHUMITA ROY, JUDICIAL MEMBER:

The instant appeal filed by the revenue is directed against the order dated 24.8.2023 passed by the CIT(A)/NFAC, Delhi arising out of the order dated 28.6.2018 passed by the ACIT Circle-1(1), Hubli u/s 271(1)(c) of the Income-tax Act,1961 [in short 'the Act'] for the Assessment Year 2015-16 whereby and whereunder the penalty imposed u/s 271(1)(c) of the Act by the Id. AO to the tune of Rs.59,22,201/- was deleted.

2. The brief facts leading to the case is this that the assessee is an individual carrying on the business of civil contractor. During the Assessment Year 2015-16. A survey u/s 133A of the Act was conducted on 31.10.2014. Consequently, the assessee declared an additional income of Rs.1.30 Crores and on 27.10.2015 declared total income of Rs.3,49,70,370/- by filing the return of income including

the additional income disclosed during survey u/s 133A of the Act. The assessee proceedings in respect of the assessee were finalized under the limited scrutiny upon making adhoc disallowance of Rs.2 lakhs against expenses claimed. Penalty proceedings u/s 271 of the Act against the additional income offered to tax in the return which was surrendered during the course of survey u/s 133A of the AC was initiated on 26.12.2017 by issuing a notice u/s 274 of the Act with the following contentions while levelling allegation against the assessee for initiating such penalty proceedings:

“Have concealed the particulars of your income as much as Rs.1.30 Crores for declaring additional income at the time of survey u/s 133A and furnishing inaccurate particulars of work expenses.”

2.1 Such initiation of penalty proceedings was culminated into an order levying penalty to the tune of Rs.59,22,201/- u/s 271(1)(c) of the Act on the ground of evasion by reason of concealment of particulars of income or furnishing of inaccurate particulars of such income, which was in turn deleted by the ld. CIT(A). Hence, the instant appeal before us by the revenue.

3. It is the case of the revenue that the assessee did not submit any explanation in respect of the additional income of Rs.1.30 Crores which was declared during the course of survey initiated u/s 133A of the Act and therefore, the assessee has agreed himself the concealment of Rs.1.30 Crores. In that view of the matter, the ld. D.R. relied upon the order passed by ld. AO in levying penalty against the assessee.

3.1. On the other hand, the assessee's case is of too fold. Firstly, the initiation of the penalty proceeding was on both the limbs i.e. concealment of income and furnishing of inaccurate particulars in respect of such income as no specific limbs noted in the notice issued u/s 274 of the Act dated 26.12.2017 by the ACIT Circle-1(1), Hubli, which dehorn the statutory provisions of section 271(1)(c) of the Act

rather failed to fulfill the pre-requisite of specifying one of the limbs while levelling allegation against the assessee in quashing penalty proceedings. The penalty proceedings itself has no basis and thus, liable to be quashed.

3.2 The ld. A.R. relied on the judgement of jurisdictional High Court in the case of CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn), wherein held that notice u/s. 274 of the Act should specifically state as to whether penalty is being proposed to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income. The Hon'ble High court has further laid down that certain printed form where all the grounds given in [section 271](#) are given would not satisfy the requirement of law. The Court has also held that initiating penalty proceedings on one limb and finding the assessee guilty in another limb is bad in law. It was submitted that in the present case, the aforesaid decision will squarely apply and the orders imposing penalty have to be held as bad in law and liable to be quashed.

3.3 The alternate argument by the ld. Counsel for the assessee is that since the assessee has already disclosed the total income of Rs.3,49,70,370/- while including Rs.1.30 Crores, declared as additional income for the year during the survey u/s 133A of the Act during the filing of regular return of income on 27.10.2015 for the year under consideration, there was no scope of making any allegation of concealment of income by the assessee. In that view of the matter, ld. CIT(A) has rightly allowed the appeal relying upon the judgement passed by the Hon'ble Delhi High Court in the case of CIT Vs. M/s. SAS Pharmaceuticals reported in (2011) 355 ITR 259 (Delhi) as the crux of the submissions made by the ld. A.R.

4. We have heard the rival submissions mad by the respective parties and also perused the relevant materials available on record. Admittedly, we find that while finalizing the assessment order, the ld. AO recorded furnishing of inaccurate particulars in respect of work

expenses but on 26.12.2017 itself, notice u/s 274 of the Act was issued regarding both the limbs being concealment of particulars of income as much as Rs.1.30 Crores for declaring additional income at the time of survey u/s 133A of the Act and also furnishing inaccurate particulars of work expenses. It is a trite law that initiation of penalty proceedings should be made by issuance of notice by the Id. AO specifying the allegation to the level of assessee, which is admittedly absent in the instant case and the case made out by the assessee for quashing of the entire proceedings seems to be acceptable. More so, we find from the order of penalty dated 28.6.2018 which speaks of both the limbs of concealment of particulars of income or furnishing of inaccurate particulars of income. It is surprising to note that the Id. AO was confused under which limb the allegation is to be levelled against the assessee either concealment of income or furnishing of inaccurate particulars of income. In that view of the matter, we support the contention made by the assessee's counsel. We also take the essence of the judgement passed by the Hon'ble Bombay High Court Full Bench at Goa in the case of Md. Farhan A. Shaikh (2021) 434 ITR 1 (Bombay), wherein notice was issued u/s 271(1)(c) of the Act without striking all the irrelevant part found to be an omnibus notice suffers from the voice of vagueness and the entire proceeding was quashed.

4.1 The Hon'ble Karnataka High Court in the case of [CIT & Anr. v. Manjunatha Cotton and Ginning Factory](#) (supra) has laid down the following principles to be followed in the matter of imposing penalty u/s.271(1)(c) of the Act.

"NOTICE UNDER SECTION 274

59. As the provision stands, the penalty proceedings can be initiated on various ground 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 the Section 274 makes it clear that 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 ground mentioned in Section 271 are mentioned would not satisfy 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% to 300% 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, 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 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 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 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. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are

different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in 292 ITR 11 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of MANU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind."

The final conclusion of the Hon'ble Court was as follows:-

"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.*
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- c) Willful concealment is not an essential ingredient for attracting civil liability.*
- d) Existence of conditions stipulated in [Section 271\(1\)\(c\)](#) is a sine qua non for initiation of penalty proceedings under [Section 271](#).*
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*
- f) Even if there is no specific finding regarding the existence of the conditions mentioned in [Section 271\(1\)\(c\)](#), at least the facts set out in Explanation 1(A) & (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.*
- g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under [Section 271\(1\)\(c\)](#) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in [Section 1\(B\)](#).*
- h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.*
- i) The imposition of penalty is not automatic.*

- j) *Imposition of penalty even if the tax liability is admitted is not automatic.*
- k) *Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.*
- l) *Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.*
- m) *If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.*
- n) *The direction referred to in Explanation IB to [Section 271](#) of the Act should be clear and without any ambiguity.*
- o) *If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.*
- 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 ground mentioned in [Section 271](#) are mentioned would not satisfy requirement of law.*
- r) *The assessee should know the grounds which he has to meet specifically. Otherwise, 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.*
- t) *The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from*

proceedings of assessment, it is independent and separate aspect of the proceedings.

4.2 The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

4.3 It is clear from the aforesaid decision that on the facts of the present case that the show cause notice u/s. 274 of the Act is defective as it does not spell out the grounds on which the penalty is sought to be imposed. Following the decision of the Hon'ble Karnataka High Court, we hold that the orders imposing penalty in all the assessment years have to be held as invalid and consequently penalty imposed is cancelled.

4.4 We may also add that the provision of [section 292B](#) of the Act cannot cure the basic defect in assumption of jurisdiction and only cure the mistake, defect or omission in return of income, assessment, notice or the proceeding is in substance and effect in conformity with or according to intent and purpose of the Act. As we have already seen that the Hon'ble Karnataka High Court in the decision referred to earlier view the show cause notice and the reasons mentioned in the show cause notice are part of the process of the natural justice and the defect in such notice cannot be overlooked. In view of the aforesaid decision, we do not find any infirmity in the arguments advanced by the learned AR before us.

4.5 The contention of the Ld. DR is that the assessee has participated in the penalty proceedings and hence the error, if any that has occurred would be cured in view of the provisions of sec.

292B/292BB of the Act. Opposing the said contention, reliance was placed on the decision rendered by the Bangalore Bench of the Tribunal in the case of Shri K. Prakash Shetty vs. ACIT (ITA Nos. 265 to 267/Bang/2014 dt. 05/06/2014) wherein it was held that the provisions of sec.292BB would not come to the rescue of the revenue, when the notice was not in substance and effect in conformity with or according to the intent and purpose of the Act. In our view, the notice issued by the Assessing Officer was not in substance, and effect in conformity with or according to the intent and purpose of the Act, since the Assessing Officer did not specify the charge for which penalty proceedings were initiated and further there was non-application of mind on the part of the Assessing Officer.

4.6 Furthermore, when the assessee has already disclosed his additional income while filing regular return on 27.10.2015 for the year under consideration including that of Rs.1.30 Crores, which was declared during the course of survey u/s 133A of the Act and paid tax accordingly on such additional income, we do not find any decision in levying penalty u/s 271(1)(c) of the Act in the present facts and circumstances of the case. Thus, as the same view was taken by the Id. CIT(A), we do not find any reason to interfere with such observations made by the Id. CIT(A) and in quashing the penalty proceedings initiated against the assessee which is found to be just and proper. The appeal filed by the revenue is therefore found to be devoid of merit and thus dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 21st Dec, 2023

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Madhumita Roy)
Judicial Member

Bangalore,
Dated 21st Dec, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**