

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

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)  
AND  
SHRI. AMARJIT SINGH (ACCOUNTANT MEMBER)

I.T.A. No.2849/Mum/2023  
(Assessment year :2012-13)

Jeeva Spa & Salon Pvt Ltd A-76/754, MIG Colony, Bandra (E), Mumbai-400 051 <b>PAN : AACJ5859R</b>	vs	National Faceless Assessment Centre, New Delhi Room No.457, Aayakar Bhavan M.K. Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Present for the Assessee	Shri.Abhishek Khandelwal, CA
Present for the Department	Ms. Usha Gaikwad, Sr.DR

Date of hearing	13/12/2023
Date of pronouncement	30/01/2024

**ORDER**

**Per N.K. Choudhry (JM):**

This appeal has been preferred by the Assessee, against the order dated 14/07/2023 impugned herein passed by the National Faceless Appeal Centre (NFAC)/ Ld. Commissioner of Income tax (Appeals) (in short 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y.2012-13.

**2.** In the instant case, the case of the Assessee was taken up as non-filer under MNS module for A.Y. 2012-13 as per system. From the CIB / AIR information for the A.Y. 2012-13 it was also seen that the Assessee has made cash deposit of Rs.43 lakhs. Therefore, considering the peculiar facts and circumstances, the case of the Assessee was reopened under section 147 of the Act by issuing notice dated 28/03/2019 under section 148 of the Act, in response to which the Assessee declared its total income at Rs.'Nil' by filing its return of income, wherein the Assessee claimed to has been involved in the business of spa and salon and made cash deposit of Rs.33,59,790/- but not Rs.43,00,000/- as mentioned in ITS detail.

**3.** The Assessing Officer, ultimately disallowed the said expenses and added the amount of Rs.3,21,350/- in the total income of the Assessee under section 40(a)(ia) of the Act, by considering the Note No.6 of the Balance-Sheet under the head "Other Current Liabilities" wherein the Assessee has shown TDS on contract charges @ 2% on the gross amount of Rs.3,21,350/-on contract payable, but as alleged not submitted the proof of payments of the same before the due date of filing the return of income.

**4.** The AO simultaneously also initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

**5.** The Assessing Officer thereafter issued the notice dated 11/12/2019 for penalty proceedings under section 271(1)(c) of the

Act, which remained un-complied with. Thereafter, the Assessing Officer also issued show cause notice dated 04/12/2021 to explain by 13/12/2021, as to why an order imposing a penalty upon it under section 271(1)(c) of the Act should not be passed. The Assessee still made no compliance within the specified period. Therefore, the Assessing Officer by holding "*that since after providing various opportunities, the Assessee could not have been able to furnish any reply / explanation, etc. in compliance to the show cause notice issued to him and duly delivered as discussed above , shows that the Assessee has accepted the addition made as well as initiation of penalty proceedings under section 271(1)(c) of the Act "* ultimately levied the penalty of Rs.99,261/- @100% of the tax sought to be evaded on the assessed income of Rs.3,21,250/- by holding that the Assessee has concealed the particulars of its income.

**6.** The Assessee being aggrieved challenged the levy of penalty before the Ld. Commissioner, who vide impugned order confirmed the levy of penalty.

**7.** The Assessee being aggrieved against the impugned order, is in appeal before us.

**8.** We have given thoughtful consideration to the orders passed by the authorities below. It is an admitted fact that the penalty proceedings in the instant case have been initiated under section 271(1)(c) of the Act for furnishing inaccurate particulars of income and consequently notice dated 11/12/2019 for penalty proceedings was also issued for furnishing inaccurate particulars of income. But

ultimately, the penalty to the tune of Rs.99,261/- was levied for concealment of income but not for furnishing inaccurate particulars of income, which goes to show that the initiation of penalty was on different footing than the imposition of penalty. Therefore, question emerge as to "whether penalty can be levied on the charge/limb on which neither satisfaction was recorded in the assessment order nor notice u/s 274 of the Act was issued".

**8.1** The Hon'ble Apex Court in case of M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC) dealt with the Notice issued u/s 274 of Act without specifying the particular limb of penalty proceedings and dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241(Kar), whereby the decision to the effects ***"that the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income"*** has been confirmed by holding as under:-

*"2. This appeal has been filed raising the following substantial questions of law:*

- (1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the*

*assessee had concealed income in the facts and circumstances of the case?*

*(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid in spite of the amendment of Section 271(1)(B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?*

*(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?*

*3. The Tribunal has allowed the appeal filed by the Assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the Assessee, has relied upon the decision of the Division Bench of this Court rendered in the case of COMMISSIONER or INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.*

*4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court, the appeal is accordingly dismissed."*

**8.2** The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) also observed that where

the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court also held that the standard proforma of notice under section 274 of the Act without striking off the irrelevant clause would lead to an inference of non-application of mind by the Assessing Officer and levy of penalty would suffers from non-application of mind.

**8.3** In the aforesaid cases, the Hon'ble Higher Courts emphasized that notice issued u/s 274 of the Act for initiation of penalty proceedings for a particular limb has to be clear, meaning thereby the charge/limb for which the penalty proceedings have been initiated must be specific and unambiguous and therefore for sustaining the charge/limb of penalty, it is imperative to levy the penalty on such charge the penalty proceedings have been initiated and the notice u/s 274 of the Act has been issued but not otherwise. In simple terms, the penalty can only be levied on the limb/charge for which satisfaction has been recorded for initiation of penalty proceedings and notice u/s 274 of the Act has been issued but not the limb/charge on which no satisfaction has been recorded and no notice 274 of the Act has been issued. Coming to the instant case, as in the instant case, the penalty has been levied on the different limb than the limb under which the penalty proceedings were initiated and penalty notice was issued, which amounted to non-granting of the proper opportunity to defend the case and also non-application of mind, hence considering the peculiar facts and circumstances and respectfully following the Judgments referred to above, we are inclined to allow the appeal of the Assessee and consequently, penalty is deleted.

9. In the result, appeal filed by the Assessee stands allowed.

**Order pronounced in the open Court on 30/01/2024.**

Sd/-

sd/-

<b>(AMARJIT SINGH)</b>	<b>(NARENDER KUMAR CHOUDHRY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Pavanan

**प्रतिलिपिअग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

Asstt.Registrar,  
**ITAT, Mumbai**