

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 398/CHD/2023

निर्धारण वर्ष / Assessment Year. : 2016-17

M/s Happy Steel Pvt. Ltd., B-XXIX-2254, Kamganwal Road, P.O. Jugiana, Ludhiana.	Vs	The DCIT, CC-2, Ludhiana.
स्थायीलेखासं./PAN NO: AAACH6019D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, CA
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 03.06.2024

उदघोषणाकीतारीख/Date of Pronouncement : 05.06.2024

HYBRID HEARING

आदेश/Order

PER A.D. JAIN, VICE PRESIDENT:

This is assessee's appeal for assessment year 2016-17 against the order dated 24.05.2023 passed by the ld. CIT(A)-5, Ludhiana confirming levy of penalty of Rs.2.50 lacs u/s 271AAB(1) of the Income Tax Act, 1961.

2. The Following grounds of appeal have been raised :

1. That order passed u/s 250(6) by the Learned Commissioner of Income Tax (Appeals)-5, Ludhiana is against law and facts on the file in as much

as he was not justified to arbitrarily uphold the levy of penalty u/s 271AAB(1) at Rs. 2,50,000/-.

2. That levy of penalty and upholding the same is bad in law in as much as the same is barred by limitation as the assessment order has been passed on 29.12.2017 [] and the penalty should have been levied by 30.06.2018.

3. That levy of penalty and upholding the same is bad in law in as much as neither any specific charge has been made out nor any satisfaction was recorded while issuing the penalty notice u/s 271AAB.

3. The brief facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted at the business premises of the assessee ltd. company, who is in the business of iron and steel, on 27.08.2015. Assessment in this case was completed u/s 143(3) of the I.T Act, 1961 on 29.12.2017 and income of the assessee was assessed at Rs.3,88,23,170/- after making the addition of Rs.88,86,872/- on account of undisclosed investment in stock. During the search operation, physical stock was taken and stock was found to be excess by Rs.1.20 Crores. The statement of Sh. Sanjeev Garg was recorded u/s 132(4) of the I.T. Act, in which, he accepted the discrepancies in the stock and offered Rs.25 Lacs as additional income over and above the normal business income for the A.Y. 2016-17.

4. Aggrieved by the assessment order, the assessee filed an appeal before the Ld.CIT(A). The Ld. CIT(A)-5, Ludhiana vide order dated 23.01.2019, partly allowed the appeal of the assessee. On total addition of Rs.88,86,872/- representing undisclosed investment in stock, the CIT(A) upheld the addition of Rs.11,50,050/- and given relief of the balance amount i.e., Rs.77,36,822/-.

5. Vide the penalty order dated 30.03.2022, penalty of Rs.2.50 lacs was imposed on the assessee u/s 271AAB(1) of the Act.

6. By virtue of the impugned order, the ld. CIT(A) confirmed the penalty.

7. Before us, the ld. Counsel for the assessee contended that the surrender made was general and was not with respect to any specific item as will be borne out from the reading of the statement and letter submitted before the DDIT; that it was only on the stock inventory drawn on the date of search and the tentative Trading Account prepared on the date of search, that the alleged difference was worked out; that the surrender made did not fall within the definition of "undisclosed income" and thus, no penalty was

exigible u/s 271AAB of the Act. The ld. Counsel for the assessee further submitted that no specific charge had been made out by the Assessing Officer either while passing the assessment order, or while issuing impugned penalty notice; that in such circumstances also, no penalty was exigible u/s 271 AAB. The ld. Counsel for the assessee placed reliance on the Judgment of the Hon'ble Madras High Court in the case of 'Principal Commissioner of Income Tax v/s Shri R. Elangovan' in appeal Nos. 770 and 771 of 2018.

7.1 Reliance has also been placed on the decision dated 20.03.2024, of the Delhi Bench of the Tribunal in the case of 'Jaina Marketing & Associates Vs DCIT', passed in ITA Nos. 225 & 226/Del/2023, for assessment years 2018-19 and 2019-20.

8. On the other hand, the ld. DR has placed strong reliance on the impugned order, contending that as correctly observed by the ld. CIT(A), the Finance Act, 2012 inserted Section 271AAB in the Act, which provided for levy of penalty for concealment of income for the specified period at different rates; that the rates vary from 10% to 90%, depending on whether the undisclosed income has been admitted or not, whether the due taxes have been paid or

not, and other conditions; that the perusal of the said section reveals that the penalty u/s 271AAB is levied only for concealment of income and the rates of levy of penalty vary according to the level of compliance made by the assessee with respect to undisclosed income; that hence, specifying the limb in the penalty notice is not a requirement in the present scenario, as the penalty notice is for the concealment of income and the difference is only with respect to the rate at which the penalty has to be levied; that the AO has applied the minimum rate of 10% while levying the penalty for concealment of income keeping in view the facts & circumstances the case; that therefore, the contentions of the appellant on this issue are not acceptable; and that the contention of the AR that there is no striking-off of the limb of penalty is not tenable, as the AO, in the penalty order itself, has given a clear finding that the income falls within the meaning of undisclosed income, as defined in Explanation (c) to Section 271AAB(1)(a). It has also been contended that the ld. CIT(A) has correctly placed reliance on the decision of the Amritsar Bench of the Tribunal in the case of 'HPCL Mittal Energy Limited Vs. Addl. CIT, Circle-1, Bathinda' in ITA Nos.554&555/Asr/2014.

9. Heard. The notice issued to the assessee u/s 274 read with Section 271AAB, a copy whereof has been placed at APB 13, reads as follows :

(B)

NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF THE INCOME TAX ACT, 1961.

PAN-AAACH6019D

Office of the
Asstt. Commissioner of Income Tax,
Central Circle-II, Opp. B.V.M. School,
Kitchlu Nagar, Ludhiana.
Dated: 08.06.2018

To

The Principal Officer,
M/s Happy Steels Private Limited,
B-XXIX-2254, Kanganwal Road,
P.O Jugiana, Ludhiana

Madam / Sir,

Whereas during the course of assessment proceedings before me for the assessment year 2016-17 it has been noticed,

a. that you have declared undisclosed income U/s 132(4) of the Income Tax Act, 1961 within the meaning of section 271AAB of the Income Tax Act, 1961.

b. that you have declared undisclosed income in the return which was not declared U/s 132(4) of the Income Tax Act, 1961.

c. That you have undisclosed income which was neither declared U/s 132(4) of the Income Tax Act, 1961 nor shown in the Income Tax Return.

You are hereby requested to appear before me at 12:30 P.M. on 15.06.2018 and show cause why an order imposing a penalty on you should not be made under section 271AAB 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 271AAB.

(Upendra Kishor)
Assistant Commissioner of Income Tax,
Central Circle- II, Ludhiana.

(UPENDRA KISHOR)
Asstt. Commissioner of Income Tax
केंद्रीय वृत्त-II, लुਧਿਆਣਾ / Central Circle-II, Ludhiana

9.1 The ld. Counsel for the assessee submitted that the penalty notice issued u/s 271AAB of the Act is not, in any manner, depicting the charge against the assessee as to under which clause, i.e., (a), (b) or (c) of Section 271AAB (1) or clause (a), or (b) of 271AAB(1A) of the Act, penalty is leviable on the assessee. It was submitted that thus, the notice initiating the penalty u/s 271AAB of the Act is a vague notice and it is, therefore, illegal, and consequently, the order of penalty and the order of the ld. CIT(A) confirming the same deserve to be set aside. The ld. Counsel for the assessee relied on various judicial precedents in support of the said submissions.

9.2 As can be seen from the notice issued u/s 271AAB of the Act, as reproduced herein above, the assessee rightly contends that it does not depict the charge against the assessee, as to under which clause (a), (b) or (c) of Section 271AAB (1), or clause (a) or (b) of 271 AAB (1 A) of the Act, penalty is leviable on the assessee. Therefore, we are of the opinion that the notice initiating penalty u/s 271 AAB of the Act is vague and the assessee was not made aware of the actual charge on which the penalty proceedings will be initiated on the assessee. The various judicial precedents, as

discussed in the following paras have held that the penalty notice should be clear enough to convey to the assessee, the exact charge which is to be levied against him/her/it for levying penalty for the contravention of the related provisions of the Act.

10. An Identical question came for consideration before the Jaipur bench of the Tribunal in the case of 'Sri. Mahaveer Prasad Agarwal Vs. The DCIT', in ITA No.1218/JP/2019, vide order dated 02-06-2022, wherein a similar notice had been issued to the assessee, therein and the Tribunal held as under:

'5.1 In case of Shri Padam Chand Pungliya vs. ACIT (supra), the Coordinate Bench has held at para 5 page 7 of its order :-

"It is pertinent to note that the disclosure of additional income in the statement recorded under section 132(4) Itself is not sufficient to levy the penalty under section 271AAB of the Act until and unless the income sodisclosed by the assessee falls in the definition of undisclosed income defined in the explanation to section 271AAB(1) of the Act. Therefore, the question whether the income disclosed by the assessee is undisclosed income in terms of the definition under section 271AAB of the Act has to be considered and decided in the penalty Since the assessee has offered the said income in the return of income filed under section 139(1) of the Act, therefore, the question of taking any decision by the AO in the assessment proceedings about the true nature of surrender made by the. assessee does not arise and only when the AO has proposed to levy the penalty then it is a pre-condition for invoking the provisions of section 271AAB that the said income disclosed by the assessee in the statement under section 132(4) is an undisclosed income as per the definition provided under section 271AAB. Therefore, the AO in the proceedings uno section 271AAB has to examine all the facts of the case as well as the basis of the surrender and then arrive to

the conclusion that income disclosed by the assessee falls in the definition of undisclosed income as stipulated in the explanation to the said section. Therefore we do not agree with the contention of the Id. D/R that the levy of penalty under section 271AAB is mandatory simply because the AO has to first issue a show cause notice to the assessee and then has to make a decision for levy of penalty after considering the fact that all the conditions provided under section 271AAB are satisfied."

It is evident from the show cause notice issued under section 274 read with section 271AAB (APB Page 1) that the AO was not clear as to on what precise charge the appellant was asked to show cause, whether the assessee shall pay by way of penalty under clause (a), (b) or (c) of section 271AAB. The AO has just mentioned "deliberately concealed the true income". Thus the AO without mentioning specific default of the assessee in terms of clause (a), (b) or (c) of section 271AAB of the Act, the, show cause notice issued in routine manner cannot be considered a valid notice in the eyes of law and accordingly the levy of penalty against the assessee is held to be void ab initio.

Further, the assessee has substantiated the undisclosed cash available, as to the extent of surrendered income of Rs. 8,73,000/-.

6. In view of the above, considering the peculiar facts, the grievance of the assessee is accepted as genuine and as such the order of the Id. CIT (A) sustaining the penalty is hereby quashed.

7. In the result, appeal of the assessee is allowed.'

10.1 The Indore Bench of the Tribunal, in ITA No. 869/Ind/2018, in the case of 'Shri Ashok Bhatia vs. DCIT', vide order dated 05.02.2020, held as under :

"8. From perusal of the above provision we observe that sub section 3 of Section 271AAB of the Act talks about issuing the notice u/s 274 of the Act. So for initiating the penalty proceedings u/s 271AAB of the Act the first step to be taken by ld. A.O is to issue a valid notice u/s 274 of the Act. Sub- section (1) to Section 274 of the Act provides a procedure that "No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard". To comply with this requirement the notice, u/s 274 should, be clear enough to convey the assessee about the charge

which is to be leveled against him/her/it for levying the penalty for the contravention of the related provisions of the Act which in the instant case relates to not surrendering of undisclosed, amount during the course of search which is subsequently admitted during the course of assessment and not challenged before the Ld. CIT(A). So it was incumbent for Ld. A.O that in the notice issued u/s 274 of the Act he should have mentioned that penalty u/s 271AAB of the Act may be levied na 10/20/30% since the assessee falls in Clauses (a)/(b)/(c) of section 271AAB of the Act. He should have further mentioned that as the assessee's case falls under clause-c of section 271AAB of the Act, why she should not be visited by penalty (30% of the undisclosed income. Against this charge the assessee should have been given a reasonable opportunity of being heard.

From going through the above three notices issued to the assessee on 22.03.2016, 03.06.2016 and 16.09.2016, we find that there is no mention about various conditions provided u/s 271 AAB of the Act. The Ld. A.O has very casually used the proforma used for issuing notice before levying penalty u/s 271(l)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the Section 271AAB of the Act in the notice it does not talk anything about the provision of section 271 AAB. Certainly such notice has a fatal error and technically is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee. Hon'ble Jurisdictional High Court in the case of PCIT V/s Kulwant Singh Bhatia (supra) dealt the issue of defective notice issued u/s 274 r.w.s. 271(l)(c) of the Act and Hon'ble court after relying judgment of Hon'ble Supreme Court in the case of CIT V/s Manjunatha Cotton Ginning Factory and CIT v/s SSA'S Emerald Meadows (supra) held that such show cause notices would not satisfy the requirement of law as notice was not specific. Merely issuing notice in general proforma will negate the very purpose of natural justice. Hon'ble Apex Court in the case of Dilip N Shraf 161 Taxmann 218 held that "the quasi criminal proceedings u/s 271(l)(c) of the Act ought to comply with the principles of natural justice".

15. We, therefore respectfully following the judgment of jurisdictional High Court in the case of PCIT V/s Kulwant Singh Bhatia (supra), decision of Coordinate Bench of Chennai in the case of DCIT V/s R. Elangovan (supra) and Jaipur Bench in the case of Ravi Mathur Vs DCIT (supra) and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued u/s 274 of the Act. does not refer to the charges of provision of Section 271AAB of the Act makes the alleged notice defective and invalid and thus deserves to be quashed. Since the penalty proceedings itself has been quashed the impugned

penalty of Rs.64,22,348/- stands deleted. Thus assessee succeeds on legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act."

10.2 The Kolkata Bench of the ITAT, in the case of 'Sushil Kumar Paul vs. ACIT' in ITA No. 2274/Kol/2019, vide order dated 15.12.2022, held as under:-

"From the perusal of the above proposition, we observe that sub section 3 of section 271AAB of the Act talks about issuing the notice u/s 274 of the Act. So for initiating the penalty proceedings u/s 271 AAB of the Act, the first step to be taken by Id. Assessing Officer issue a valid notice u/s 274 of the Act provides a procedure that "No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard." To comply with this requirement the notice u/s 274 should be clear enough to convey the assessee about charge which is to be leveled against him/her it for levying penalty for contravention of the related provisions of the Act. So it was incumbent for Id. AO that In the notice issued u/s 274 of the Act should have mentioned, that penalty u/s 271 AAB of the Act may be levied @ 70/20/30% since the assessee falls in Clauses (a)/(b)/(c) of section 271 AAB of the Act. He should have further mentioned that as the assessee's case falls under Clause-c of section 271AAB of the Act, why he should not be visited by the penalty (ee. 30% of the undisclosed income. Against this charge, the assessee should have been given reasonable opportunity of being heard.

10. From going through the above notice issued to the assessee on 28.12.2017. we find that there is no mention about various conditions provided u/s 271AAB of the Act. The Id. AO has very casually used the proforma used for issuing notice before levying penalty u/s 271(l)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the section 271AAB of the Act in the notice, it does not talk anything about the provisions of section 271AAB. Therefore, certainly such notice has a fatal error and technically' is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee".

10.3. A similar view has been taken in the following orders of the Tribunal:-

- i) *Hyderabad Bench of the Tribunal in ITA No. 756/Hyd/20 ACIT dated 04.01.2022, ' Smt. Pallem Reddy Sreelakshmi, Tirupati'.*
- ii) *Indore Bench of the Tribunal in ITA No. 249/Ind/2021 dated 28.06.2022, ' ACIT vs. Shri. Arnit Tiwari'.*
- iii) *Jabalpur Bench of the Tribunal in ITA No. 1218/JP/2019 dated 02.08.2022, ' Shri Mahaveer Prasad Agarwal vs. DCIT'.*

11. All the above decisions, it is seen have been considered by the Delhi Bench of the Tribunal in 'Jaina Marketing & Associates' (supra), to decide the matter in favour of the assessee.

11.1 Then, the Hon'ble Madras High Court, in the case of 'Pr. CIT Vs Shri R.Elangovan', order dated 30.03.2021, passed in Tax Appeal Nos. 770 and 771 of 2018 (copy placed at APB 14-19), has held as follows :

"11. The argument of Mr.T.R.Senthilkumar, learned Senior Standing Counsel appearing for the Revenue is that the notice issued by the Assessing Officer while imposing penalty clearly stated that it was a notice issued under Section 274 read with Section 271AAB of the Act. Therefore, the assessee was aware that he had to face penalty proceedings initiated under Section 271AAB of the Act. That apart, the assessee submitted two replies and was also heard in person and thereafter penalty was imposed. Hence, it is submitted that the order passed by the Tribunal setting aside the penalty in its entirety is not sustainable. The learned Senior Standing Counsel has also referred to Sections 274 and 275 of the Act.

12. *In support of his contention, the learned Senior Standing Counsel has placed reliance on the decision of the Allahabad High Court in the case of PCIT Vs. Sandeep Chandak [reported in (2018) 93 Taxmann.com 405].*

13. *Per contra, Mr.N.V.Narayanan, learned counsel appearing for the respondent - assessee would submit that the notice issued prior to initiation of penalty proceedings did not specify as to under which limb of Section 271AAB of the Act, the Assessing Officer proposed to levy penalty, that this defect goes to the root of the matter and vitiates the entire proceedings and that the Tribunal was right in allowing the assessee's cross objection. In support of his contention, the learned counsel for the assessee has placed reliance on the decisions of the Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory [reported in (2013) 359 ITR 565] and in the case of CIT Vs. SSA's Emerald Meadows [(2016) 73 Taxmann. Com 241] and also the decision of this Court, to which, one of us (TSSJ) was a party, in the case of Babuji Jacob Vs. ITO, Non Corporate Ward 1(2), Chennai [reported in (2021) 124 Taxmann.com 363].*

14. *In our considered view, the Tribunal is fully right in vacating the penalty on the ground that the notice was defective. The provisions of the Act have clearly laid down the procedure to be followed and adhered to while imposing the penalty. The proposal for such penalty proceedings was separately initiated upon completion of assessment and there may be cases where the assessee would not even contest the order of assessment. But, that would not preclude the assessee from challenging the penalty proceedings, as penalty proceedings are independent and the procedure required to be followed cannot be dispensed with.*

15. *As rightly pointed out by the learned counsel appearing for the assessee, Section 271AAB of the Act, which deals with penalty consists of three contingencies. Therefore, the Assessing Officer should point out to the assessee as to under which of the three clauses, he chooses to proceed against the assessee so as to enable the assessee to give an effective reply. Since the same has not been mentioned, the assessee has been denied reasonable opportunity to put forth their submissions. The Tribunal, in paragraph 5 of the impugned order, has verbatim reproduced the penalty notice and we find that the notice is absolutely vague and none of the irrelevant portions had been struck off nor the relevant portions had been marked or indicated. Hence, the Tribunal is right in observing that the penalty could not have been levied based on such defective*

notice and more particularly, when the assessee has been strenuously canvassing the jurisdictional issue from the inception.

16. In so far as the decision of the Allahabad High Court in the case of Sandeep Chandak is concerned, the factual position is slightly different. This decision is for the principle that where the assessee, in the course of search, makes a statement, in which, he admits the undisclosed income and specifies the manner, in which, such income has been derived, then the provisions of Section 271AAB of the Act would automatically get attracted. There can be no quarrel over this proposition. But, once the provisions get attracted, it is incumbent on the part of the Assessing Officer to specify as to under which clause in 271AAB(1) of the Act, he intends to proceed against the assessee. In the instant case, in the absence of such material in the penalty notice, it has to be held that the notice is defective.

17. The decisions of the Karnataka High Court in the cases of Manjunatha Cotton and Ginning Factory and SSA's Emerald Meadows and the decision of this Court in the case of Babuji Jacob clearly support our above conclusion. For all the above reasons, we find no grounds to interfere with the common order passed by the Tribunal.

18. Accordingly, the above tax case appeals are dismissed confirming the common impugned order passed by the Tribunal. No costs. Consequently, the connected CMP is also dismissed."

11.2 So far as regards the decision of the Amritsar Bench of the Tribunal in 'HPCL Mittal Energy Limited' (supra), which has been relied on by the CIT(A), it is seen that the said decision pertains to levy of penalty u/s 271(1)(c) of the Act. The decisions discussed hereinabove, on the other hand, are directly on penalty levied u/s 271AAB(1) of the Act, which is the penalty presently in question.

12. No decision contrary to the decisions discussed hereinabove has been brought to our notice.

13. For the detailed reasoning and discussion contained in the preceding paragraphs, considering the fact that no specific charge has been mentioned in the penalty notice issued u/s 271AAB of the Act, following the decisions discussed herein above, ground No.3 is accepted and the penalty is deleted.

14. In view of our above decision on Ground No.3, nothing further survives for adjudication, nor was anything else argued.

15. In the result, the appeal is allowed.

Order pronounced on 05.06. 2024.

Sd/-

(KRINWANT SAHAY)
ACCOUNTANT MEMBER

Sd/-

(A.D. JAIN)
VICE PRESIDENT

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar