

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “C” BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Keshav Dubey, Judicial Member**

ITA No. 518/Bang/2024 (Assessment Year: 2014-15)		
Mr. Shivakumar Mahadevaiah B-9, 9th Main Lalith Mahal Nagar Mysore 570028 PAN – ACZPM8866F	vs.	The Income Tax Officer-2(3) Room No. 14, 1st Floor Aayakar Bhavan 26/12, Residency Road Mysore 570010
(Appellant)		(Respondent)
Assessee by:	Shri Sukesh Patil, CA	
Revenue by:	Shri V. Parithivel, JCIT	
Date of hearing:	07.05.2024	
Date of pronouncement:	12.06.2024	

ORDER

Per: Keshav Dubey, J.M.

This appeal at the instance of the assessee is directed against the order of the National Faceless Appeal Centre, Delhi (‘the learned CIT(A)’) dated 23.01.2024 vide DIN & order No. ITBA/NFAC/S/250/2023-24/1060014046 (1) passed under Section 250 of the Income Tax Act, 1961 (the Act) for Assessment Year (AY) 2014-15.

2. The assessee has raised the following grounds of appeal: -

- “1. *The order of AO is bad in law and against the decision of higher appellate authority.*
2. *Could A.O be appreciated for not considering the jurisdictional High Court decision in the case of CIT vs. Manjunatha Cotton*

and Ginning Factory- 359 ITR 565, where it was pronounced that when the AO has failed to issue a specific show-cause notice to the assessee as required u/s 274 read with section 271(1)(c), penalty levied is not sustainable. This view is further supported in the case of CIT vs. SSA's Emerala Meadows 73 taxmann.com 241 (kar.) (Revenue's SLP dismissed in 242 taxman 180)

3. *Could A.O be appreciated for not considering the fact that the rule of judicial precedent demands, view favorable to assessee must be adopted as held in the case of CIT Vs Vegetable Products Ltd 88 ITR 192.*
4. *Appellant craves leaves to add, to alter, to amend and to delete any other grounds at the time of hearing.”*

3. The brief facts of the case are that the Assessing Officer (AO) passed an order under Section 143(3) of the Act by making addition of Rs.20,16,940/- on account of unexplained cash credit under Section 68 of the Act. Aggrieved by the order of the AO the assessee preferred an appeal before the learned CIT(A), Mysore. However, the case was dismissed by the Ld. CIT(A) and accordingly the assessee paid the entire tax demand. The Ld.AO initiated the penalty proceedings on or before the completion of the Assessment Proceedings by observing as follows: -

“Penalty u/s. 271(1)(c) initiated separately by way of issue of notice u/s. 274 for furnishing of inaccurate particulars/concealment of income.”

4. Thereafter the notice under Section 271 r.w.s. 274 of the Act was issued on 28.12.2016 as below: -

M Shivakumar/A.Y 2014-15
ACZPMS866F

NOTICE UNDER SECTION 271 F.W.S. 274 OF THE INCOMETAX ACT, 1961

PAN: ACZPMS866F

Office of the Income Tax Officer,
Ward-103, Room # 111, 1st Floor,
Aayakar Bhavan, 26/12, Residency Road,
Nazarbad, Mysore-570010.

Dated: 28/12/2016

To
Shri M Shivakumar
26,
Krestmanan, Mysore.

Whereas in the course of proceedings before me for the assessment year 2014-15, it appears to me that you:-

* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice issued under section 271(1)(c) of the Indian Income Tax Act, 1961 or which you were required to furnish under section 139(1) of the notice given under section 139(2) of the Income Tax Act, 1961; or

Dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.


* have without reasonable cause failed to comply with a notice under section 22 (4) / 23(2) of the Indian Income Tax, 1961 in under section 142(1)/ 143(2) of the Income Tax Act, 1961.

* have concealed the particulars of your income orfurnished inaccurate particulars of such income.

* Have failed to file the audit report under section 44AB of the Income Tax Act, 1961 within the time allowed in the Indian Income Tax Act, 1961.

You are hereby requested to appear before me at 4.00 P.M on 29/12/2016 and show cause why an order imposing a penalty on 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 by writing on or before the said date which will be considered before any order is made under section 271.

(S. KAVATHIRI)
Income Tax Officer,

Seal 

5. Thereafter, the Ld. AO passed a Penalty order under Section 271(1)(c) of the Act by levying the maximum penalty of Rs.18,15,246/- on 30.01.2020 holding that the assessee has furnished incorrect particulars of income to the extent of Rs.20,16,940/- and it is a fit case for levy of penalty under Section 271(1)(c) and levied the maximum penalty @ 300% amounting to Rs.18,15,246/- for AY 2014-15. Aggrieved by the penalty order passed under Section 271(1)(c) dated 30.01.2020, the assessee preferred an appeal before the learned CIT(A) who confirmed the penalty by way of dismissing the appeal by observing as follows: -

6.1. I have carefully considered the facts of the case and the order u/s. 271(1)(c) of the Act and the applicable law in this regard. The appellant had been giving inconsistent answers and replies suiting to his need in the course of assessment proceedings, appellate proceedings in respect of quantum addition and in the present appellate proceedings in respect of penalty appeal. The inconsistencies are evident from the assessment order and appellate order on quantum addition. In the present appeal, the appellant has only dwelled on case laws without clarifying backed by evidences and proofs as to how the Id.AO was incorrect. Case laws cannot save an assessee-appellant unless the facts are fully cleared before the appellate forum and how he did not have any mens rea in furnishing inaccurate particulars of income and in concealing the income. The assessee-appellant failed to demonstrate how his case does not call for any penalty.

6.2. I am convinced that the appellant has concealed his particulars of income and also furnished inaccurate particulars of his income amounting to Rs.20,16,940/- by not disclosing true facts. Further, the Hon'ble CIT(A) Mysore has dismissed the appellant's appeal against quantum addition by order dated 28.05.2018. I am satisfied that the appellant's case is a fit case for levy of penalty u/s.271(1)(c) of Rs. 18,15,246/- and accordingly I hold that the Id.AO has rightly levied the necessary penalty u/s. 271(1)(c). Hence I uphold the penalty u/s. 271(1)(c) and dismiss the appeal.”

Aggrieved by the order of the learned CIT(A) the assessee filed the present appeal before the Tribunal.

6. The solitary issue that is raised whether the CIT(A) is justified in confirming the penalty by not considering the decision of the Hon'ble Jurisdictional High Court in the case of **CIT vs. Manjunatha Cotton and Ginning Factory- 359ITR 565**. Before us the learned A.R. of the assessee submitted that the authorities below failed to appreciate that without issuing specific show cause notice to the assessee, as required under Section 274 r.w.s. 271(1)(c), penalty cannot be sustainable.

7. The learned D.R., on the other hand, vehemently argued that the Id. AO had categorically observed in para 4 of the assessment order that the assessee had submitted incorrect particulars of income and hence penalty proceedings under Section 271(1)(c) is initiated separately and therefore the penalty levied under Section 271(1)(c) is justified as the same is levied on a particular limb of furnishing inaccurate particulars of income.

8. We have heard the rival contentions and perused the material on record. Admittedly we find that while passing the assessment order, the Id. AO, vide para 4 of his order, recorded furnishing of inaccurate particulars of income. On 28.12.2016 the notice under Section 271 r.w.s. 274 of the Act was issued regarding either the limbs being concealment of particulars of income or also furnishing of inaccurate particulars of income. After hearing both the parties we are of the opinion that similar issue came for consideration before this Tribunal in the case of **DCIT vs. Chandrashekhar Rommi** in ITA No. 753/Bang/2023 dated 21.12.2023 for AY 2014-15, wherein it was held as under: -

“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 Id. 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 ld. 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 ld. 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 ld. CIT(A), we do not find any reason to interfere with such observations made by the ld. 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.”

Accordingly, respectfully following the above decision the ground of appeal raised by the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 12th June, 2024.

Sd/-
(Chandra Poojari.)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bengaluru, Dated: 12th June, 2024

n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Bengaluru*