

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.1625/DEL/2024
(Assessment Year: 2002-03)**

Ashok Kumar Chauhan,
Prop. Gurcharan Jewellers,
17/2, Tilak Nagar,
New Delhi – 110 018.

vs.

ITO, Ward 45 (5),
New Delhi.

(PAN : AAAPC1500F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Singhvi, CA
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 11.07.2024
Date of Order : 16.07.2024

ORDER

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 15.03.2024 for the assessment year 2002-03.

2. Grounds of appeal taken by the assessee read as under :-

“1.1 That on the facts and circumstances of the case, the CIT(A) was not justified in upholding the penalty u/s 271(1)(c) of the Income Tax Act, 1961 in respect of additions on account of gift of Rs.15,00,000/- and undisclosed stock of Rs.12,33,382/- without appreciating the correct factual position and considering the submissions filed by the Appellant.

1.2 That both these issues were not part of the Assessment Order dated 06/03/2013 passed u/s 254/143(3) of the Income Tax Act, 1961 which resulted in impugned penalty proceedings

u/s 271(1)(c) of the Act, the A.O. has no jurisdiction to consider and impose the penalty in respect of those two issues.

1.3 That the penalty in respect of these additions being already imposed by the predecessor Assessing Officer vide its penalty order dated 26/07/2012 passed u/s 271(1)(c) of the Act, the impugned penalty order dated 17/03/2015 is in the nature of double jeopardy.

1.4 That in any case, the penalties imposed vide order 26/07/2012 in respect of both these issues having been already deleted by the Hon'ble ITAT vide order dated 19/12/2018, the second penalty order passed by the Assessing officer is illegal and not sustainable under law.

2.1 That even otherwise, the Assessing officer was not justified in imposing the penalty without recording requisite satisfaction and in absence of valid notice u/s 274 of the Act as to the nature of default.

2.2 That the Assessing Officer has not specified the limb under which penalty was initiated and accordingly initiation and imposition of penalty is illegal and invalid.

3 That the orders passed by the lower authorities are not sustainable on facts and same are bad in law.”

3. In this case, penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short ‘the Act’) was directed by the ld. CIT (A) to be levied on the following two amounts :-

(i)	Undisclosed stocks	:	Rs.12,33,832/-
(ii)	Unexplained gifts	:	Rs.15,00,000/-

4. Against this order, assessee is in appeal before the ITAT. I have heard both the parties and perused the records.

5. Ld. Counsel of the assessee has raised a legal issue that the penalty notice was an omnibus notice without specifying the charge and it was prayed that since the notice is not specifying the charge, penalty levied is liable to be quashed.

6. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below and submitted that the aforesaid issue was also raised before the ld. CIT (A) but he has rejected the same.

7. Upon careful consideration and going through the notice submitted by the assessee at page no.80 of paper book, we note that the notice is an omnibus notice without specifying the specific charge upon the assessee and in such circumstances, Higher Courts have held that penalty levied is not sustainable. In this regard, we refer to Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT in Tax Appeal No. 51 and 57 of 2012 dated 11.03.2021 wherein it has been held that no specification of charge in the penalty notice leads to same becoming void and penalty on that count is to be deleted. Hon'ble Court held as under:-

“Head Note only :

S.271(1)(c) : Penalty – Concealment –Non-striking off of the irrelevant part while issuing notice under section 271(1)(c) of the Income-tax Act, - Order is bad in law – Assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.”

8. Hon'ble jurisdictional High Court in ITA 475/2019 & Ors. Vide order dated 02.08.2019 has also taken the same view. Hon'ble jurisdictional High Court concluded 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 ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify 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 in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No.11485 of 2016 by order dated 5th August, 2016. 22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.”

9. Respectfully following the precedent as above, we note that due to defect in the penalty notice, penalty is not sustainable, hence the same is quashed. Since we have quashed the penalty on defective notice, merits are not being discussed as they are only academic in interest.

10. In the result, this appeal filed by the assessee is allowed.

Order pronounced in the open court on this 16TH day of July, 2024.

**SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 16TH day of July, 2024

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**