

**IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, AM  
AND  
SHRI ANIKESH BANERJEE, JM**

**ITA No.4750/Mum/2023**  
(Assessment Year: 2012-13)

Kent Engineering India  
Private Limited  
10<sup>th</sup> Floor, Lal Bahadur  
Shastri Marg, Vikharoli,  
Gagorre Nagar, S.O.  
Embassy 247, Tower C  
Vikhroli,  
Mumbai-400 083

**(Appellant)**

Commissioner of Income  
Tax (Appeal), 1(2)(1),  
Vs. Aaykar Bhavan, M.K. Road,  
Mumbai-400 020

**(Respondent)**

**PAN No. AAACR1966M**

**Assessee by** : Shri Niraj Sheth, AR  
**Revenue by** : Shri Dhiraj Kumar, DR

**Date of hearing:** 15.07.2024  
**Date of pronouncement:** 16.07.2024

**ORDER**

**PER ANIKESH BANERJEE, JM:**

01. Instant appeal of the assessee is filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, ‘the learned CIT (A)’], order passed under Section 250 of the Income-tax Act, 1961 (in short, ‘the Act’), for A.Y. 2012-13 dated or order 4<sup>th</sup> November, 2023. The impugned order was emanated from the order of the learned Dy. Commissioner of Income Tax, Circle

11(2)(2), Mumbai (in short, 'the Act'), order passed under Section 271(1)(c) of the Act, date of order 29<sup>th</sup> November, 2016.

02. The assessee has taken following grounds of appeal:-

*“The grounds stated here under are independent of, and without prejudice to one another.*

*Transfer Pricing*

*In the order dated 4 November 2023 passed under section 250 of the Income-tax Act, 1961 ('the Act'), the Commissioner of Income-tax (Appeals), Mumbai (hereinafter referred to as the "CIT[A]') has erred on facts and in law in upholding the levy of penalty of Rs. 8,811,560.*

*Ground No. 1. On the facts and in the circumstances of the case and in law, the order passed by the Learned Assessing Office ("AO") under section 271(1)(c) is bad in law.*

*Ground No. 2-On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding /confirming the action of the Learned AO in not recording any direction regarding concealment of income or furnishing of inaccurate particulars in order to levy penalty under Section 271(1)(c) of the Act. Accordingly, the penalty proceedings are erroneous and are liable to be set aside.*

*Ground No. 3-On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding*

*/confirming the action of the Learned AO in levying penalty of Rs. 8,811,560 under section 271(1)(c) of the Act alleging that the Appellant has furnished inaccurate particulars of income and concealed its income for the year under consideration.*

*Ground No. 4-On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding /confirming the action of the Learned AO in disregarding the fact that the Appellant has maintained proper documentation and information in accordance with the relevant provisions of Indian transfer pricing regulations and has not concealed or furnished inaccurate particulars of income.*

*Ground No. 5-On the facts and in the circumstances of the case and in law, without prejudice to the other grounds of appeal, the learned TPO erred in not appreciating that the arm's length price of the international transactions under dispute was computed by the Appellant in accordance with the provisions of Section 92C of the Act.*

*Ground No. 6-On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding /confirming the action of the Learned AO in erred in appreciating that the additions made in the assessment order is merely difference of opinion between the Appellant and the Learned AO/TPO in computing the arm's length price of the international transactions entered into by the Appellant.*

*Ground No. 7-On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding /confirming the action of the Learned AO erred on facts and in law in not appreciating that the Appellant has acted in good faith and with due diligence and that the conditions precedent for invoking Explanation 7 to Section 271(1)(c) did not exist on the facts of this case.*

*Ground No. 8-On the facts and in the circumstances of the case and in law, the learned AO and the Hon'ble CIT(A) further erred in holding that the Appellant failed to bring any material on record, which could establish that, the Appellant has furnished inaccurate particulars of its income under section 271(1)(c) of the Act.*

*Ground No. 9-On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding / confirming the action of the Learned AO erred in facts and circumstances of the case and in law in levying of penalty under section 271(1)(c) of the Act without establishing any mens rea on part of the Appellant without which penalty could not have been levied.*

*Ground No. 10-Without prejudice to the grounds 1 to 9 above, the Learned AO and the Hon'ble CIT(A) erred in calculating the penalty as Rs. 8,811,560 instead of Rs. 8,411,035. The Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per law.”*

03. A brief fact of the case is that the Transfer Pricing adjustment was made by the learned Transfer Pricing Officer during the impugned assessment year and addition was made after the final assessment order amounting to ₹2,59,23,978/-. The proceeding under Section 271(1)(c) read with section 274 of the Act was initiated and penalty levied of ₹88,11,560/-, which is 100% of the amount of tax sought to be evaded. The specific reasons of penalty whether ‘concealment’ or ‘inaccurate particulars of income’, not duly mentioned during the penalty proceedings and also during the issuance of notice under Section 271(1)(c) read with section 274 of the Act. Aggrieved assessee filed an appeal before the learned CIT (A). The learned CIT (A) upheld the penalty order. Being aggrieved, assessee preferred the appeal before us.
04. The learned Authorized Representative vehemently argued and submitted a short paper book (in short, APB) which is kept in record.
05. The learned Authorized Representative first argued the legal issue related to maintainability of penalty order under Section 271(1)(c) of the Act. The learned Authorized Representative invited our attention in appellate order, Para 6, which is reproduced as below: -

*"6. In view of the above facts, I am satisfied that the assessee has furnished inaccurate particulars of income overstating its current year's loss by Rs.2,59,23,978/- and as such, it is a fit case for imposing penalty u/s. 271(1)(c) of the Act. Accordingly, I hereby impose a minimum penalty of Rs.88,11,560/- being 100% of the amount of tax sought to be evaded by reason of concealment of particulars /furnishing of inaccurate particulars of*

*such income. The penalty u/s 271(1)(c) is worked out at Rs. 88,11,560/- being 100% and Rs.2,64,34,680/- being 300% of the tax sought to be evaded.*

*The penalty order u/s. 271(1)(c) of the Income Tax Act, 1961 is passed after obtaining approval from the Jt.CIT, Range-11(2), Mumbai u/s. 274(2)(b) of the Income Tax Act, 1961, vide order no. JCIT-11(2)/Penalty Approval/2016-17 dated 29.11.2016."*

06. The learned Authorized Representative further invited our attention in APB page no. 59, to notice issued by the learned Assessing Officer under Section 274 read with section 271(1)(c) of the Act date of notice 12<sup>th</sup>May, 2016, copy of the notice is duly reproduced below: -

*"NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(C) OF THE INCOME TAX ACT. 1961.*

*PEN./ PAGE NO. 2012-13*

*DATE 12.05.2016*

*PAN NO. AAACR1966M*

*TO,*

*M/S. SNC-Lavalin Engineering India Pvt. Ltd.*

*2nd Floor, A Wing, Trade Star,*

*J.B. Nagar, Kondivita Lane,*

*Andheri-Kurla Road, Marol, Andheri (E),*

*Mumbai- 400 059.*

*Sir/Madam,*

*Whereas in the course of proceedings before me for the Assessment year 2012-13 it appears that you have*



*concealed the particulars of your income or furnished inaccurate particulars of such income.*

*You are hereby requested to appear before me on 15/06/2016 at 11.45 AM/PM and show cause why an order imposing a penalty on you should not be made under Section 271(1)(c) of the Income Tax Act, 1961. If no one attends this office on the said date of hearing, the case shall be decided on the basis of material available on records.*

*Yours faithfully,*

*Sd/-*

*(ARJU GARODIA)*

*Jt. Commissioner of  
Income Tax, (OSD)*

*Circle -11(2)(2),*

*Mumbai"*

07. The learned Authorized Representative argued and mentioned that in the notice, U/s 274 r.w.s. 271(1)(c) of the Act which is initiated the penalty and also in the penalty order the learned Assessing Officer has not mentioned reason of penalty specifically whether the 'concealment' or 'in accurate particulars of income'. The issue was duly taken care of before the learned Assessing Officer during the penalty proceedings and objection was filed. The copy of the letter of objection dated 15<sup>th</sup> June, 2016, is annexed to page no.7 of APB. The same legal ground was agitated before the learned CIT (A) and the objection was filed by the assessee during the appellate proceedings, but none was adjudicated this legal issue. The learned Authorized Representative respectfully relied on the decision of

Hon'ble Jurisdictional HC in case of **Mohd. Ferhan A Sheikh Vs. JCIT 125 taxman.com 253 (Bom)**.

08. The learned Departmental Representative vehemently argued and fully relied on the order of Revenue Authorities.
09. We heard the rival submissions and considered the documents available on record. During the hearing, the learned Authorized Representative explained that the addition was made on the basis of the estimation of manpower related to Associated Enterprises and non-related Associated Enterprises. So, the impugned addition was made on the estimation which is not attracted the penalty under Section 271(1)(c) of the Act. But the learned Authorized Representative only pressed the ground no. 1 and 2 related to legal issue for issuance of notice under Section 271(1)(c) read with section 274 of the Act, which is defective for non-mentioning of the reasons of penalty. The assessee made an objection during the penalty proceedings and also in the appellate proceedings. The grounds were taken before the learned CIT (A). The issue is squarely covered by the decision of Hon'ble Jurisdictional HC in case of **Mohd. Ferhan A Sheikh Vs. JCIT 125 taxman.com 253 (Bom)**.
010. The learned Authorized Representative laid down that in the absence of such specific notice, the notice would be invalid. As held in various judicial pronouncements including the decision of Hon'ble **Karnataka High Court** in **CIT V/s SAS's Emerald Meadows (73 Taxmann.com 241)** against which Special Leave Petition (SLP) filed by the department stood dismissed by Hon'ble **Supreme Court** which is reported as **73 Taxmann.com 248**. The notice u/s 274/271(1)(c) of the Act is not carrying the specific limb. Therefore, this is a case where both the parts of the offences i.e., concealment



of income as well as furnishing of inaccurate particulars of income were involved.

011. Finally, respectfully following the binding judicial precedents as cited aforesaid, we are of the considered opinion that the impugned penalty is not sustainable on legal grounds. Hence, by deleting the same, we allow the appeal of the assessee.
012. Accordingly, we set aside the appellate order and the penalty amount of ₹88,11,560/- is quashed. As the appeal is decided on the basis of the legal issue, so the merit is only remained for the academic purpose.
013. In the result, the appeal of the assessee **bearing ITA No. 4750/Mum/2023**, is allowed.

Order pronounced in the open court on 16.07.2024.

Sd/-  
(AMARJIT SINGH)  
(ACCOUNTANT MEMBER)

Sd/-  
(ANIKESH BANERJEE)  
(JUDICIAL MEMBER)

Mumbai, Dated: 16.07.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai