



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**ITA No.248/CTK/2024**

Assessment Year : 2010-2011

Ram Kumar Daitapati, Matimandap Sahi, Nabata Khan Lane, PO/PS-Dist: Puri	Vs.	Income Tax officer, Ward, Puri
PAN/GIR No.AEPPD 2413 R		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Mishra, Adv  
Revenue by : Shri Sanjay Kumar, CIT DR

**Date of Hearing : 31/07/2024**  
**Date of Pronouncement : 31/07/2024**

**ORDER**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 13.2.2024 in Appeal No.CIT(A),Bhubaneswar-2/10130/2019-20 for the assessment year 2010-2011.

2. Shri P.K.Mishra, Id AR appeared for the assessee. Shri Sanjkay Kumar, Id CIT DR represented on behalf of the revenue.

3. At the outset, it was submitted by Id AR that in this case, the penalty proceedings were initiated vide notice dated 6<sup>th</sup> September, 2017. In the said notice, no charge was specified by the Assessing Officer. For ready perusal, the notice issued by the AO u/s 271(1)(c) dated 6.9.2017 is reproduced as under :-

NOTICE U/s.274 READ WITH SECTION 271(1)(C) OF THE INCOME TAX ACT, 1961.

PAN : AEPPD2413R

Government of India  
Office of the Income-tax Officer, Puri Ward,  
Aayakar Bhawan, Penthakota, Sri Vihar  
Marg,, Puri-752 003

Dated, Puri, the 6<sup>th</sup> September, 2017.

To

Sri Ram Kumar Daitapati,  
At - Matimandap Sahi, Puri-752001.

Whereas in the course of proceedings before me for the assessment year, 2010-11, 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 given under section 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961, No. .... 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(1)/23(2) of the Indian Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act, 1961.
- have concealed the particulars of your income or ..... furnished inaccurate particulars of such income.

You are hereby requested to appear before me at my office on dated 5<sup>th</sup> October, 2017 at 12.00 Noon 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 this opportunity of being heard in person or through authorized representative, duly authorized in writing, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.



Seal of office

*N. K. Sahoo*

(N. K. SAHOO)  
Income Tax Officer  
INCOME TAX OFFICER  
ପୁରୀ  
PURI WARD PURI

4. It was the submission of Id AR that it is not clear from the said notice issued u/s.271(1)(c) of the Act by the Assessing Officer whether the show cause is issued to the assessee for concealment of particulars of income or for furnishing inaccurate particulars of income. Therefore, he requested for deletion of the penalty.

5. In reply, Id CIT DR supported the penalty order and the order of Id CIT(A). It was the submission that in the penalty order, the Assessing Officer has framed the charge of concealment of particulars of income and thus, the penalty leviable deserves to be upheld.

6. I have considered the rival submissions. A perusal of the penalty notice, it is seen that the Assessing Officer has not specified whether the penalty is initiated for concealment of particulars of income or for furnishing inaccurate particulars. In the assessment order, it is simply stated that the penalty proceedings u/s.271(1)(c) is initiated. Thus, no satisfaction was recorded at the time of initiation of penalty proceedings.

7. The penalty provisions of section 271(1)(c) of the Act are attracted where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is also a well-accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meanings. Therefore, it was imperative for the Assessing Officer to strike-off the irrelevant limb so as to make the assessee aware as to what is the

charge made against him so that he can respond accordingly. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clauses would lead to an inference of non-application of mind by the Assessing Officer.

8. Hon'ble Apex Court vide judgment in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* has held that Omission by the AO to explicitly specify in the penalty notice as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation.

9. In view of above settled proposition, I am of the considered view that the Assessing Officer has not specified the charge for which the penalty proceedings have been initiated. This being so, the penalty levied by the Assessing Officer and confirmed by the Id CIT(A) stands deleted.

10. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 31/07/2024.

Sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 31/07/2024  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Ram Kumar Daitapati,  
Matimandap Sahi, Nabata Khan Lane, PO/PS-Dist:  
Puri
2. The Respondent: Income Tax officer, Ward, Puri
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**