

आयकर अपीलीय अधिकरण, राँची न्यायपीठ, राँची
IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI BENCH, RANCHI
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM
AND
SHRI PRABHASH SHANKAR, AM

आयकर अपील सं./ITA Nos.255 to 258/RAN/2023

(निर्धारण वर्ष / Assessment Years :2012-2013 to 2016-2017)

Raj Kumar Agarwal, Ranchi.	Vs.	ACIT, Central Circle-1, Ranchi
स्थायी लेखा सं./PAN No. : ABMPA3576E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri R.R. Mittal,AR
राजस्व की ओर से /Revenue by	:	Shri P.K.Koley, Sr.DR
सुनवाई की तारीख / Date of Hearing	:	26/08/2024
घोषणा की तारीख/Date of Pronouncement	:	27 /08/2024

आदेश / O R D E R

Per Bench :

These appeals preferred by the assessee emanates from separate orders of Id. CIT(A)- Patna-3 dated and assessment years as mentioned therein as per the grounds of appeal on record.

2. At the time of hearing the parties herein submitted that the facts and circumstances in all these appeals are similar and identical including the issues involved in these appeals. Having heard the submissions, all these matters are heard together and disposed off vide this consolidated order.

3. These appeals have been preferred by the assessee against the imposition of penalty u/s 271 (1) (c) of the Income Tax Act,1961

(hereinafter referred to as "the Act"). The assessee had filed written submission along with copy of penalty notices issued u/s 274 r.w.s. 271 (1) (c) of the Act.

4. We observe from the notices above that the limb on which the penalty has been imposed is not specified. The inappropriate portion of the notice has not been struck off. It is discernible that the AO had not struck off either of the two limbs i.e. concealment of the particulars of income; and furnishing of inaccurate particulars. The Full bench of the Hon'ble Bombay High Court in Mohd. Farhan A. Shaik vs. Dy. CIT (2021) 125 taxmann.com 253 (Bom.) considered this very issue. Answering the question in affirmative, the full bench held that a defect in notice of not striking the inappropriate words vitiates the penalty even though the AO had properly recorded the satisfaction for imposition of penalty in his order u/s143 (3) of the Act. In another judgment, the Hon'ble Bombay High Court in Pr. CIT vs. Golden Peace Hotels and Resorts (P) Ltd. (2021) 124 taxmann .com 248 (Bom.) also took similar view that where the portions which are inapplicable in the penalty notice were not struck off, the penalty was vitiated. SLP of the Department against this judgment has been dismissed by the Hon'ble Supreme Court in Pr. CIT vs. Golden Peace Hotels and Resorts (P) Ltd. (2021) 124 taxmann.com 249 (S.C.).

5. The Hon'ble Karnataka High Court in SSA Emeralds Meadows vs. CIT 242 taxmann 180 also echoed the view that if the charge of penalty is not specific in the notice issued to the assessee u/s 274 r.w.s.271 (1) (c) of the Act, meaning thereby if such notice is ambiguous as to whether penalty is levied for concealment of income or for providing of inaccurate particulars of income, then such notice is void ab initio and bad in law. This view of the Hon'ble Karnataka High Court was upheld by the Hon'ble Apex Court whereby the SLP filed by the Department was dismissed in CIT vs. SSA Emeralds Meadows (2016)242 taxmann 180 (S.C).

6. We must reiterate and we feel appropriate in this context of adjudication also to revisit the classic decision of Hon'ble Karnataka High Court in CIT & Anr. vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar.) wherein the court had enshrined that levy of penalty is altogether different from assessment procedures. The penalty cannot be levied in a routine manner. The principles of natural justice must be followed wherein the notice served on the assessee must clearly and unambiguously specify the charge on which the Department proposes to levy the penalty so that the assessee can be ready with his defence and prepare his case and submissions accordingly.

7. In view thereof, even without going into the merits of the extant cases only on the very legal premise that in the penalty notice issued u/s 274 r.e.s.271 (1) (c) of the Act, the inapplicable words were not struck off, the levy of penalty therefore is vitiated and is held bad in law. We therefore, set aside the orders of the Id. CIT(A) and direct the AO to delete the penalty from the hands of the assessee for the years hereinabove enumerated in the cause title.

8. In the result all the appeals of the assessee are allowed.

Order pronounced in the open court on 27/08/2024.

Sd/- **Sd/-**
(PRABHASH SHANKAR) **(PARTHA SARATHI CHAUDHURY)**
 लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य / JUDICIAL MEMBER

राँची Ranchi; दिनांक Dated 27/08/2024

S.S, Sr.P.S.(on tour)

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

1. अपीलार्थी / The Appellant- .
Raj Kumar Agarwal,
Ranchi.
2. प्रत्यर्थी / The Respondent-
ACIT, Central Circle-1, Ranchi
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राँची / DR, ITAT, Ranchi
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, राँची / ITAT, Ranchi