

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 No.251/RAN/2023

(निर्धारण वर्ष / Assessment Year :2014-15)

Murari Lal Jalan, HUF, S.N.Ganguly Road Ranchi	Vs.	ACIT, Central Circle-2, Ranchi
स्थायी लेखा सं./PAN No. : AAGHM7703L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri R.R. Mittal,C.A.
राजस्व की ओर से /Revenue by	:	Shri P.K.Koley, Sr.DR

सुनवाई की तारीख / Date of Hearing	:	29/08/2024
घोषणा की तारीख/Date of Pronouncement	:	03/09/2024

आदेश / O R D E R

PER PRABHASH SHANKAR, AM:

In the present appeal, the assessee has assailed the order passed by the Id. CIT(A)- Patna-3 dated 30.11.2023 in which he upheld the penalty order passed by the Id. AO u/s 271 (1) (c) of the Income tax Act, 1961 (in short "the Act").

2. In the grounds of appeal, the assessee has claimed that the Id. CIT(A) erred in confirming the order passed by the Id. ACIT, Central Circle-1 Ranchi, based on defective notice u/s 274 of the Act and further erred in not following the precedence of the predecessor

CIT(A) as also in not following the directions of the jurisdictional Tribunal as well as the Supreme Court of India.

3. The facts of the case are that search operation was conducted u/s 132 of the Income tax Act, in this case on 22.07.2015 during which the assessee offered undisclosed income in the statement recorded u/s 132(4) of the Act and paid the due taxes while filing return in response to notice u/s 153A. The assessee admitted the allegation of the Id. AO regarding certain manipulation in the transaction of shares to earn long term capital gains to buy peace and the return of income was also accepted by the AO. Subsequently, notice u/s 274 of the Act was issued for initiation of penalty u/s 271(1)(c) of the Act. The Id. AO imposed the penalty accordingly and this order was upheld by the Id. CIT(A).

3.1. Before the the Id.CIT(A),the assessee claimed that the AO in the show cause notice for levying penalty did not specifically pointed out as to whether the penalty was w.r.t. concealment of income or inaccurate particular of income. Accordingly, the show cause notice was claimed to be defective on which no penalty could be imposed. The Id.CIT(A),however, rejected the contention of the assessee and held that mere not striking off of one limb in the show cause notice issued u/s 274 of the Act will not invalidate the whole penalty order.

4. Before us, the Id. Authorised Representative, by way of written submission in support of the grounds of appeal, has claimed that during assessment proceedings u/s 153A, all the details were provided to the Id. AO and no adverse inference was drawn while accepting the return of income. No fact has been brought on record to prove that any concealment has been made or inaccurate particulars have been submitted. 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. It is further submitted that the notice issued u/s 274 of the Act for the initiation of penalty by the Id. AO is defective in as much as the said notice did not specifically state as to whether it was for concealment of income or for furnishing of incorrect particulars of income. The Id. AR has placed reliance on various case laws in support of the contention that if certain show cause notice of penalty in printed form was issued u/s 274 without pointing the relevant default, initiation of penalty proceedings on one limb while finding the assessee guilty in another limb is bad in law as held in the case of CIT & Anr. vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar.) It is further contended the Hon'ble Supreme Court in the case of in SSA's Emeralds Meadows vs. CIT 242 taxmann 180 on similar facts has held there was no substantial

question of law and dismissed the SLP of the Department with regard to the above penalty of proceedings.

4.1 The learned DR has relied on the orders of lower authorities holding that penalty was rightly initiated and imposed.

5. We have carefully considered the rival submissions, contents of the penalty order, appellate orders, provisions of the Act in this regard as also the relevant case laws. It may be stated here that similar issue has already been dealt with by this Bench in its recent decision in the case of **Raj Kumar Agrawal vs CIT for Assessment Years 2012-13 to 2016-17 in ITA No.255-258/Ran/2023** dated 26th August 2024. In this case also, the assessee contested penalty order u/s 271(1) (c) on alleged defective notice issued u/s 274 of the Act. The Bench after taking note of the facts of the case and proposition of law as emerging from cited decisions above cancelled all the penalty orders. The operative part of the appeal is reproduced as below for ready reference:-

"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/s 143 (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."

5.1 Since the issue in hand which basically hinges on the alleged defective show cause notice issued in terms of section 274 of the Act, is exactly similar, following this Bench's decision in the case of Raj Kumar Agrawal(supra),we, therefore, set aside the

penalty order and direct the AO to delete the penalty imposed on the assessee.

6. **In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 03/09/2024.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(PRABHASH SHANKAR)
लेखासदस्य/ACCOUNTANT MEMBER

राँची Ranchi; दिनांक Dated 03/09/2024
s.s, Sr.P.S.(on tour)

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

1. अपीलार्थी / The Appellant- .
Murari Lal Jalan, HUF.
2. प्रत्यर्थी / The Respondent-
ACIT, Central Circle-2, 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.

आदेशानुसार/ BY ORDER,

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