

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.342/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2010-2011)

Santosh Kumar Sahoo, At: Durga Bazar, PO: Rajsunakhala, Nayagarh	Vs	ITO, Khurda Ward, Khurda
PAN No. :AXFPS 2477 K		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri S.K.Agrawalla, CA
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr.DR
सुनवाई की तारीख / Date of Hearing	:	14/10/2024
घोषणा की तारीख/ Date of Pronouncement	:	14/10/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), Bhubaneswar-2, dated 30.06.2024, passed in DIN & Order No.ITBA/APL/S/250/2024-25/1066274744(1) for the assessment year 2010-2011, on the following grounds of appeal :-


- 1. That, penalty order passed u/s 271(1)(c) of the Act is not sustainable in view of the fact that, the Ld. Assessing Officer had not reached at a positive finding that whether the appellant concealed the income or furnished the particulars of income and the Commissioner of Income Tax (Appeals) is wrong in confirming the action of the Ld. Assessing Officer. Therefore, the penalty of 6,09,800 is liable to be deleted.*
- 2. That, the penalty order passed by the Ld. Assessing officer without recording any satisfaction in the Assessment Order is without jurisdiction, and the Ld. Commissioner of Income Tax (Appeals) is not correct in dismissing this ground of appeal.*
- 3. That, the penalty order passed u/s 271(1)(c) of the Act is barred by limitation and therefore liable to be quashed.*
- 4. That, the appellant craves to alter, amend, modify or add any other ground that may be considered necessary in the course of appeal proceeding.*

2. Brief facts of the case are that a survey was conducted at the business premises of the assessee on 24.03.2010. During the course of survey, stock physically available was quantified and it was found that assessee was having excess stock and accordingly addition was made on this account vide order passed u/s.143(3) of the Act, dated 21.03.2013. The matter travelled upto ITAT and finally the addition was reduced to Rs.10,09,500/- with respect to gold ornaments and Rs.1,50,447/- with respect to silver ornaments items, in terms of the order passed u/s.144/254 of the Act dated 17.03.2021. In the meantime, the AO proceeded with pending penalty proceedings and levied penalty u/s.271(1)(c) of the Act vide order dated 26.04.2019 at Rs.6,09,800/- by treating the excess stock of Rs.18,73,275/- of gold jewellery and Rs.1,50,447/- of silver jewellery articles found in excess during the course of survey, determined vide order dated 31.10.2018, passed u/s.144 r.w.s.254 of the Act.

3. Before us, the Id. AR of the assessee submitted that the penalty was levied on the amount of Rs.20,23,722/- holding the same as excess stock found during the course of survey. The said amount was reduced further by the AO in its order passed u/s.154 of the Act and finally the addition sustained was of Rs.10,09,500/- with respect to gold ornaments and Rs.1,50,447/- of silver ornaments/articles. He further submitted that while initiating the penalty proceedings the Id. AO has failed to record satisfaction whether assessee has furnished inaccurate particulars of income or concealed the income. He further drew our attention to the

notice issued for initiation of the penalty proceedings u/s.271(1)(c) of the Act which reads as under :-

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GOVERNMENT OF INDIA
OFFICE OF THE INCOME TAX OFFICER, KHURDA WARD,
AT-SRIRAM NAGAR, KHURDA-752055

**NOTICE UNDER SECTION 274(1) READ WITH SECTION 271(1)(c)
OF THE INCOME TAX ACT, 1961**

PAN : AXFPS2477K


OFFICE OF THE INCOME TAX OFFICER,
KHURDA WARD, KHURDA
Dated, 21st March, 2013.

To
Sri Santosh Kumar Sahoo,
Prop : Ratnakar Jewellery,
At/Po-Rajsunakhala, Nayagarh.

Whereas in the course of proceedings before me for the Assessment Year 2010-11, it appears to me that you:

❖ have concealed the particulars of income or furnished inaccurate particulars of such income.

You are, hereby, requested to appear before me at 11.45 AM on 22.04.2013 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 you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, 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(1)(c) of the I. T. Act, 1961.



21/3/13
Assessing Officer
M.R. Rath
INCOME TAX OFFICER
Khurda Ward, Khurda

Santosh Kumar Sahoo

4. Ld. AR submitted that when the penalty proceedings were initiated, it was not specified in the notice about which fault proceedings were initiated i.e. whether the assessee has concealed the income or furnished inaccurate particulars of income and, therefore, the penalty is required to be deleted.

5. *Per Contra*, Id. Sr. DR supported the order of the lower authorities and submitted that though the AO has not clearly stated that on which limb the penalty proceedings are initiated, however, the Id. CIT(A) has observed that the satisfaction was recorded for furnishing inaccurate particular of income and confirmed the penalty. He, accordingly, supported the order of the lower authorities and requested for the confirmation of the penalty so levied by the lower authorities.

6. We have considered the rival submissions and perused the material available on record. In this case, from the assessment order it is seen that while initiating the penalty proceedings, the AO has not recorded satisfaction as to which limb of Section 271(1)(c) of the Act was invoked for initiation of penalty proceedings. The relevant observations of the AO as contained in page 14 of the assessment order are reproduced hereunder :-

Initiation of penalty proceedings u/s 271(1)(c) of the I.T. Act.

An addition of Rs. 48,29,507/- was made under the head undisclosed investment leading to suppression of profit as discussed above to the total income returned by the assessee since in respect of this issue the assessee has not furnished the required details and particulars. On this issue the assessee has not furnished any explanation. The assessee has *prima facie* committed a default as envisioned u/s 271(1)(c) of the I.T Act. Penalty proceedings under that section are therefore being initiated by issuance of show cause notice as per requirement of section 274 of the I.T. Act.

Assessed u/s 143(3) of the I.T. Act, 1961 on a total income of Rs. 51,79,100/-.
Tax and interest thereon payable by the assessee is computed at Rs. 20,86,870 /-.
Issued demand notice and copy of the order to the assessee.



21/3/13
(M.R. Rath)

Income Tax Officer,
Khurda Ward, Khurda.
M.R. Rath
INCOME TAX OFFICER
Khurda Ward, Khurda

7. As per Section 271(1)(c) of the Act, the AO should record his satisfaction that the assessee has either concealed the income or furnished inaccurate particulars of his income. From the perusal of the observations made by the AO while initiating the penalty proceedings in the assessment order it is clear that he has not recorded his satisfaction on either of the limb nor in the notice issued u/s.274(1) r.w.s.271(1)(c) of the Act dated 21.03.2013, it was specifically pointed out as to whether the assessee has concealed the particulars of income or furnished the inaccurate particulars of income. Therefore, the penalty proceedings initiated without recording the satisfaction is liable to be quashed. In this regard, reliance can be placed on the decision of the Hon'ble Apex Court vide judgment in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* wherein the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows (supra)* decided by Hon'ble High Court of Karnataka is reproduced below:-

"2. This appeal has been filed raising the following substantial questions of law:

(1) Whether, omission of assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that

the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid in spite of the amendment of Section 271(1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?

3. *The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER or INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.*

4. *In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court, the appeal is accordingly dismissed."*

8. Bare perusal of the notice issued u/s 271(1)(c) of the Act apparently goes to prove that the Assessing Officer initiated the penalty proceedings by issuing the notice u/s 274/271(1)(c) of the Act without specifying whether the assessee has concealed "*particulars of income*" or assessee has furnished "*inaccurate particulars of income*", so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is bad in law, hence is not a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act.

9. 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. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs. JCIT, 291 ITR 519(SC) has also noticed that where the Assessing Officer issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the Assessing Officer was not sure as to whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind. In the background of the aforesaid legal position and,

having regard to the manner in which the Assessing Officer has issued notice under section 274 r.w.s. 271(1)(c) of the Act dated 25.03.2013 without striking off the irrelevant words and more particularly looking to the satisfaction recorded in the assessment order, as reproduced above, the penalty proceedings show a non-application of mind by the Assessing Officer and is, thus, unsustainable.

10. In view of the facts and circumstances of the case, particularly looking to the fact that the AO has failed to record the satisfaction about any limb at the time of initiation of penalty proceedings u/s.271(1)(c) of the Act, therefore, the penalty levied u/s.271(1)(c) of the Act is hereby deleted.

11. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 14/10/2024.

Sd/-
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 14/10/2024
Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Santosh Kumar Sahoo,
At: Durga Bazar,
PO: Rajsunakhala, Nayagarh
2. प्रत्यर्थी / The Respondent-
ITO, Khurda Ward, Khurda
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack