

आयकर अपीलिय अधिकरण  
कोलकाता 'सी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष  
**Before**

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 1417/KOL/2024  
Assessment Year: 2010-11**

***M/s. D.K. Industries.....Appellant  
[PAN: AABFD 9250 E]***

***Vs.***

***ITO, Ward-34(3), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by:*** S.K. Tulsiyan, Adv.

***Department represented by:*** Ankur Goyal, JCIT, Sr. D/R.

Date of concluding the hearing : September 19<sup>th</sup>, 2024

Date of pronouncing the order : November 13<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2010-11 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Id. 'CIT(A)'] dated 03.06.2024.

1.1. The brief facts of the case of the appellant are that the assessee filed return of income on 20.09.2010. The case of the assessee was selected for scrutiny and in the assessment u/s 143(3) of the Act, three additions were made. Being aggrieved with the said assessment, the assessee went in appeal

before the Id. CIT(A) wherein the appeal of the assessee has been dismissed. A proceeding u/s 271(1)(c) of the Act was initiated against the assessee as during the assessment proceedings u/s 143(3) of the Act it was seen that in the ABN Amro Bank account of the assessee a cash amounting to Rs. 20 Lakh was deposited. Assessee has been asked to furnish explanation and the Assessing Officer (hereinafter referred to as Id. 'AO') after considering the explanation of the assessee has held that assessee concealed particulars of income of deposited cash in the bank account without satisfactory explanation and hence, penalty proceeding u/s 271(1)(c) of the Act was initiated for deliberately furnishing inaccurate particular of income. The said order of penalty proceeding has been placed by the assessee before the Id. CIT(A) wherein also appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. The Id. Counsel for the assessee by citing several decisions has submitted that order of the Id. CIT(A) confirmed the impugned penalty stands *ab initio void* as Id. AO has wrongly imposed the penalty as it is evident from the penalty notice that there was no satisfaction recorded as to under which limb of Section 271(1)(c) of the Act penalty was being sought to be imposed. The Id. Counsel for the assessee submits that the Id. AO did not show cause to the appellant company as to what was the exact charge levied against him as the notice reveals that a proceeding started on both the accounts i.e. concealment of income and furnishing of inaccurate particulars of income that makes the notice invalid and void. The Id. Counsel for the assessee cited the following decisions:

1. *CIT Vs. SSA'S Emerald Meadows reported in [2016] 73 taxmann.com 248 (SC)*
2. *CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory (359 ITR 565) (Kar HC)*
3. *Sri Nilaya AR Projects Hyderabad v. ITO, ITA No. 1572/Hyd/2013*
4. *New Sorathia Engg. Co. Ltd. v. CIT [2006] 282 ITR 642/155 Taxman 513 (Guj.)*

5. *B.P. Poddar Foundation for Education ITA 439/KOL/2023 dated 26/12/2023*
6. *Suwaprasanna Bhattacharya -vs.- ACIT rendered vide Order dated 06.11.2015 in ITA No. 1303/KQL/2010*
7. *Principal CIT -vs.- Bijoy Kr. Agarwal (ITAT No. 272 of 2017 dated 02.04.2019) Cal H.C.*
8. *S.D.Constructions, Kolkata vs A.C.I.T.,Circle-49(1), Kolkata on 1 October, 2021 (I.T.A. No. 243/Ko1/2021)*

1.3. On the contrary, ld. D/R supports the impugned order.

2. Upon hearing, the submission of the Counsels of both the parties, we have perused the order passed by the ld. AO u/s 271(1)(c) of the Act and find that the ld. AO in his order has stated that assessee has no explanation to explain the source of cash deposited at Rs. 10 Lakh. According to the ld. AO, there was no satisfactory explanation offered by the assessee about the nature and source of the cash deposit and it is also evident that appeal of the assessee has also been dismissed on this ground. The ld. AO in its penalty proceeding has further held that as regards the second addition 26AS statement had shown interest income of Rs. 40,813/- in which the assessee having shown in its return of income and when assessee has been asked it is stated that they have not received the said sum. The ld. AO has further held in its penalty proceeding that third addition 26AS statement has shown rental income of Rs. 4,83,333/- and there was a difference of Rs. 40,000/- and on being asked from the assessee regarding the difference of Rs. 40,000/- he replied that they have received godown rent of Rs. 4,43,333/-. In conclusion, the ld. AO has held thus:

*“It is evident that the assessee concealed particulars of income by way of depositing cash in the bank account without offering satisfactory explanation, not showing interest income and showing less rental income. Accordingly, penalty proceeding u/s 271(1)(c) of the Act was initiated, for deliberately furnishing inaccurate particulars of income, at the time of assessment u/s 143(3) of the Act made on 08.03.2013 issuing notice u/s 274 read with Section 271 of the Act on 08.03.2013.”*

2.1. It is apparent from the order of the Id. AO that the penalty proceeding has been started on two accounts; (i) concealed the particulars of income and (ii) furnishing of inaccurate particulars of income. Now, going over the provisions of Section 271(1)(c) of the Act which is thus:

*“Explaining the legal provisions it is submitted that sec. 271 (1)(c) of the Act is a penal provision and such a provision has to be strictly construed. Unless the case falls within the four corners of the said provision, penalty cannot be imposed.*

*Sub-sec. (1) of sec. 271 stipulates certain contingencies on the happening whereof the AO or the CIT(A) may direct payment of penalty by the assessee. The fundamentality provided in clause (c) of sec. 271(1) of the Act authorizes imposition of penalty when the AO is satisfied that the assessee has either:*

*(a) concealed the particulars of his income; or*

*(b) furnished inaccurate particulars of such income.*

*Another facet of penalty proceedings are that while completing assessment proceedings, it is incumbent upon the Assessing Officer to record satisfaction as to whether the assessee has concealed its income or furnished inaccurate particulars of income in order to initiate penalty proceedings.*

*The section has two limbs i.e. penalty is leviable where the assessee has concealed its income or furnished inaccurate particulars of income. While recording satisfaction, the Assessing Officer has to give a finding as to which limb for which the penalty proceedings are being initiated so that the assessee is show caused to meet the case of Revenue.*

*The section thus requires the concerned Officer to record satisfaction in the course of any proceedings under the Act. that the person has concealed the particulars of his income or furnished inaccurate particulars of his income. After recording the satisfaction, during the course of penalty proceedings also, the concerned Officer has come to a finding that as to whether the person has concealed the particulars of his income or furnished inaccurate particulars of such income and thereafter, levy the penalty accordingly.*

*The word used between the two acts i.e. concealment of particulars of income and furnishing of inaccurate particulars of such income is 'or'. So the penalty levied by the concerned Officer is on satisfaction of any of the limbs and not the satisfaction of both the limbs.*

*Where the assessee had concealed the particulars of income in particular circumstances, then the Assessing Officer may record satisfaction to that effect and initiate penalty proceedings and thereafter on fixation of charge, levy the penalty for such act of concealing the particulars of income.*

*Similarly, in cases where the assessee concerned had furnished inaccurate particulars of such income, then similar exercise has to be carried out by the concerned Officer.”*

2.2. Now looking at the judgment cited by the assessee in this context and we find that in case of *CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory (359 ITR 565) (Kar HC)* Hon'ble Karnataka High Court has dealt upon the issue of notice u/s 274 of the Act for the purpose of levying penalty for concealment and observed as under:

*“59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation 1 or in Explanation 1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(l)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.*

*60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(l)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined*

*only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.*

*61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of T. Ashok Pai v. CIT [2007] 292 ITR 11/ 161 Taxman 340 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo Marketing (P.) Ltd. [2008] 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”*

2.3. It is important to mention here that decision of the Hon'ble Karnataka High Court has been upheld by the Hon'ble Supreme Court of in the case of *CIT vs. SSA'S Emerald Meadows* reported in [2016] 73 taxmann.com 248 (SC), wherein the Hon'ble Apex Court has held no penalty can be levied without specifying which limb of Section 271(1)(c) of the Act would be applicable in case of the assessee.

2.4. Now coming to the latest judgment passed by the Coordinate Bench of ITAT, Kolkata in the case of *B.P.Poddar Foundation for Education ITA 439/KOL/2023* dated 26.12.2023 it was held as under:

*“6. After hearing the rival contentions and perusing the material placed before us, we find that the notice dated 26.03.2015 was issued in a standard format, i.e. by mentioning both the limbs of penalty. In other words, it has been mentioned that the assessee has furnished inaccurate particulars of income, which is not correct position of law.*

*In our opinion, the Id. Assessing Officer has to issue the show-cause notice by mentioning the correct limb on the penalty was proposed to be levied, which is lacking in this case and thus the assessee was deprived from replying to the show-cause notice thereby violating the principle of natural justice. Accordingly, we hold that the order passed by the Id. Assessing Officer is not sustainable in law and is quashed.”*

3. Going over the Hon'ble Apex Court's judgment and the order passed by the Id. AO u/s 271(1)(c) of the Act which is discussed by us in the preceding paragraph it is clear that the Id. AO has passed an order u/s 271(1)(c) of the Act on two limbs; (i) concealed particulars of income and (ii) furnishing inaccurate particulars of income. Accordingly, we are in this opinion that penalty notice dated 08.03.2013 issued in this case suffers from infirmity that lack of satisfaction and lack of notice being issued in making the assessee aware regarding exact charge against him and hence, the same is liable to be quashed. Accordingly, the order of the Id. AO confirmed by the Id. CIT(A) with respect to penalty proceeding is hereby set aside.

4. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 13<sup>th</sup> November, 2024.**

*Sd/-*

**[Rajesh Kumar]**

Accountant Member

Dated: 13.11.2024

*Bidhan (P.S.)*

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

*Copy of the order forwarded to:*

1. **M/s. D.K. Industries, 2, Clive Ghat Street, Kolkata, West Bengal, 700001.**
2. **ITO, Ward-34(3), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata