



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.416/CTK/2024**  
Assessment Year : 2015-16

Panda Infratech Limited, Plot No.620, Saheed Bhubaneswar	Janpath, Nagar,	Vs.	Dy. Commissioner of Income Tax, Central Circle- 2, Bhubaneswar.
PAN/GIR No.AAFCP7216 D			
<b>(Appellant)</b>		..	<b>( Respondent)</b>

Assessee by : Shri D.Parida, CA & C.A.Parida, Adv  
Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 16/12/2024**  
**Date of Pronouncement : 16/12/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A), Bhubaneswar-2 dated 10.8.2024 in Appeal No.CIT(A), Bhubaneswar-2/10013/2018-19 against the penalty order passed u/s.271AAB of the Act for the assessment year 2015-16.

2. The assessee has raised the following grounds in this appeal:

"1. That, the order passed by the Id CIT(A), Bhubaneswar dated 10.8.2024 vide DIN & Order No.ITBA/APL/S/250/2024-25/1067514433(1) u/s.250 of the Income Tax Act, 1961 is excessive, arbitrary and bad in law.

2. That, on the facts and circumstances of the case and in laws, the notice issued by the AO for initiating the penalty u/s.271AAB of the I.T.Act, 1961 is not in accordance with law not being specifically pointing out the default for which the Id AO sought to impose penalty u/s.271AAB. Hence, the impugned order is bad in law and is liable to be quashed.

3. That, on the facts and circumstances of the case and in law, the Id CIT(A) has grossly erred in laws in confirming penalty of Rs.56,55,000/- imposed by the Id AO u/s.271AAB of the I.T.Act, 1961 without considering the submission of the appellant. Hence, the impugned order is bad in law and is liable to be quashed”

3. Brief facts of the case are that the assessee is a company engaged in the Real Estate business. A search was carried out in the case of the assessee on 2.12.2014 and consequently, this being the year under search, assessment was originally completed u/s 143(3) of the Act on 28.12.2016, wherein, addition of Rs.1.00 crore was made to the total income of Rs.1,04,20,240/- declared by the assessee and proceedings u/s.271AAB of the Act were initiated separately. Thereafter, the case of the assessee was reopened by issuance of notice u/s.148 of the Act on 8.8.2017 after taking necessary approval from the competent authority and the reassessment order was passed u/s.147/143(3) of the Act on 31.10.2017, wherein, addition of Rs.88,50,000/- was further made to the income of the assessee. This has resulted in the total income assessed at Rs.2,92,70,240/-. The Assessing Officer has also initiated proceedings 271AAB of the Act on the addition of Rs.88,50,000/-. Thereafter, the Assessing Officer proceeded with the pending penalty proceedings u/s. 271AAB of the Act and passed a single order on 30.3.2018, wherein, it has been held that the assessee has failed to disclose the income of Rs.1,88,50,000/-, which was found as a

result of search and accordingly, penalty @ 30% of the undisclosed income of Rs.1,88,55,000/- was levied u/s. 271AAB(1)(c) of the Act , which comes to Rs.56,55,000/-. Against this order, the assessee preferred appeal before the Id CIT(A), Bhubaneswar-2, who dismissed the appeal. Therefore, the present appeal is preferred by the assessee before the Tribunal.

4. During the course of hearing, Id AR submits that in respect of penalty proceedings initiated after recording satisfaction in the assessment proceedings vide order u/s.143(3) of the Act dated 28.12.2016, no separate order was passed for imposing the penalty u/s.271AAB or drop the proceedings. In the re-assessment order passed u/s.147/143(3), it has been observed by the Assessing Officer that the said proceedings are retained at the time of the present re-assessment u/s.147/143(3) of the Act. As per Id AR, under the scheme of the Income tax Act, every assessment order is separate order and every proceeding so initiated through such order is independent proceeding which must be concluded to a logical end. Therefore such proceedings cannot be retained or merged with any other order more particularly when there is no order passed u/s.263 of the Act setting aside the assessment order holding it as erroneous or prejudicial to the interest of the revenue nor the assessee has preferred any appeal against such assessment order dt.28.12.2016, thus, the doctrine of merger is not applicable. He therefore, submits that the penalty proceedings initiated u/s. 271AAB of the Act in the order passed u/s.143(3) are separate

and distinct proceedings to the proceedings initiated u/s. 271AAB of the Act vide re-assessment order passed u/s.147/143(3) of the Act. The Assessing Officer must complete both of these penalty proceedings separately initiated by way of two separate orders. Since the penalty proceedings initiated vide order u/s.143(3) dated 28.12.2016 has not yet been concluded the same is barred by limitation as on date. He thus submit that therefore, no penalty can be leviable u/s. 271AAB of the Act on the addition of Rs.1 crore in the hands of the assessee initiated vide order u/s.143(3) of the Act dt.28.12.2016 through penalty order passed u/s.271AAB against the proceedings initiated in the reassessment order passed u/s.147 r.w.s 143(3) of the Act. He further submits that assessee has not challenged the order passed u/s.143(3) dated 28.12.2016 thus as provided in section 275(1)(a) of the Act, the penalty proceedings initiated u/s.271AAB in the said order must be concluded upto 30.9.2017 i.e. within six months from the end of relevant assessment in which the order initiating such proceedings was completed. Since no order is passed upto 30.9.2017 on such pending proceedings, the said proceedings are now barred by limitation.

5. With regard to penalty of remaining amount of addition of Rs.88,55,000/- made in the order passed u/s.147/143(3) of the Act, Id AR submits that at the time of initiation of penalty proceedings, a notice dated 31.10.2017 was issued wherein, the assessee was show caused as to why penalty u/s.271AAB should not be levied for concealment of particulars of

income or furnishing inaccurate particulars of income. There must not be any occasion for levy of penalty for such offence u/s.271AAB which is not meant for these offences. He, therefore, prayed that the notice issued for initiation of penalty proceedings u/s.271AAB of the Act is not proper and defective and, therefore, consequent proceedings levying penalty deserves to be struck down. He relied upon the judgment of ITAT Kolkata benches in the case of Sushil Kumar Paul vs ACIT in ITA No.2274/Kol/2019 for A.Y. 2016-17 order dated 15.12.2022. He further relied upon the judgment of ITAT Delhi 'E' Bench in the case of Landcraft Developers (Pvt) ltd vs ACIT in ITA No,1062/Del/2019 for A.Y. 2013-14 order dated 8.1.2024 and the judgement of High Court of Calcutta in the case of Pr. CIT vs Industrial Saftey Products Pvt Ltd. (2023) 154 taqxmnn.com 433 (Calcutta).

6. On the other hand, Id Sr DR vehemently supported the orders of lower authorities and submitted that the provisions of section 271AAB(1)(c) of the Act are clear if the assessee failed to declare any income in the course of search and no such income has been declared in the return of income filed and finally addition has been made by the Assessing Officer, penalty u/s.271AAB @ 30% is attracted. Ld Sr DR submitted that against the assessment order passed u/s.143(3) of the Act and against the re-assessment order passed u/s.147/143(3) of the Act, no appeal is preferred by the assessee and, therefore, addition made on those orders are accepted by the assessee and once it is admitted by the assessee that there is certain

undisclosed income, which is not declared by the assessee, then the assessee is liable to penalty u/s.271AAB of the Act.

7. With regards to defect in the notice issued for initiation penalty proceedings, it is submitted that is a clerical error and should not be considered, as it is unfair for holding the entire proceedings as defective and void abinitio on such minor error.

8. We have considered the rival submissions and perused the materials available on record. Admittedly, the Assessing Officer while completing the order u/s.143(3) of the Act on 28.12.2016 has initiated penalty proceedings u/s.271AAB on the addition made of Rs.1.00 crore as undisclosed income of the assessee. Further, in the reassessment order passed u/s.147/143(3) dated 31.10.2017, he observed as under:

“The penalty proceedings u/s.271AAB which were initiated are also retained at the time of this reassessment u/s.147 of the I.T.Act, 1961”

9. As is evident from the observation of the Assessing Officer, the Assessing officer had tried to merge the penalty proceedings initiated under order u/s.143(3) with the penalty proceedings initiated in the re-assessment order passed u/s.147/143(3) of the Act. Since these two orders are separate and initiated by two separate proceedings i.e. assessment proceedings u/s.143(3) and second re-assessment proceedings u/s.147/143(3), wherein, two separate proceedings were initiated for

imposition of penalty u/s.271AAB, therefore, in no circumstances, one single order imposing penalty u/s.271AAB on the addition made vide two separate orders could be passed. Moreover, the penalty proceedings initiated u/s.271AAB in the order passed u/s.143(3) cannot be left undecided without there being any speaking order passed for imposing or dropping the proceedings so initiated. Thus, in the present case as the penalty proceedings were initiated u/s.271AAB vide order passed u/s.143(3) of the Act and as such when no order was passed against the initiation of such proceedings, said proceedings got time barred by limitation on 30.9.2017 in terms of limitation provided u/s.275(1)(a) and no order u/s.271AAB could be passed thereafter. This being so, in our considered opinion, no penalty order could be levied u/s.271AAB on the addition of Rs.1 crore made in the order passed u/s.143(3) of the Act dated 28.12.2016 in any other penalty order passed consequent to any further re-assessment proceedings. Accordingly, penalty so levied to the extent of addition of Rs.1 crore in the penalty order passed u/s.271AAB on 30.3.2018 is hereby deleted.

10. Now coming to the issue that the proceedings initiated vide issue of notice alongwith reassessment order dated 31.10.2017, the notice so issued is as under:

**NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961.**

Office of the Asst. Commissioner of Income-tax,  
Central Circle- 2, Bhubaneswar  
Dated, 31<sup>st</sup> October, 2017

**Penalty u/s. 271AAB**

To  
M/S. PANDA INFRATECH LIMITED  
PLOT NO 620  
3RD FLOOR, SAHEED NAGAR  
BHUBANESWAR-751007  
(PAN- AAFCP7216D)

Where as in the course of proceedings before me for the Assessment Year 2015-16, it appears to me that you:

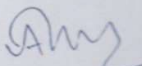
~~\*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice by U/s 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given by U/s 139(2)/148 of the Income Tax Act, 1961, No. \_\_\_\_\_ dt. \_\_\_\_\_ 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 U/s 22(4)/23(2) of the Indian Income Tax Act, 1922 or under section 142(1)/143(2) of the Indian Income Tax Act, 1961.~~

~~\*\*\*have concealed the particulars of your income or furnished inaccurate particulars of such income.~~

You have hereby requested to appear before me on 11.12.2017 at 11.30 AM and show cause why an order imposing a penalty on you should not be made u/s 271AAB of the income tax Act, 1961. If you do not 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 u/s 271AAB.



  
(Arun Kumar Das)  
Asst. Commissioner of Income-Tax  
Central Circle-2, Bhubaneswar.

Arun Kumar Das, I. R. S.  
Asst. Commissioner of Income Tax  
Central Circle - 2, Bhubaneswar

11. From the perusal of the said notice, it is very much clear that though there is reference of initiation of proceedings u/s.271AAB, however, nowhere in the said order, the assessee was asked to explain as to which provisions of section 271AAB((1)(a)(b)& (c) is going to be invoked for levy of penalty and the Assessing Officer has show caused the assessee to explain as to why the penalty should not be levied for furnishing inaccurate particulars of income or concealment of particulars of income. Thus, the Assessing Officer without mentioning specific default of the assessee in terms of clause (a) or (b) or (c) of Section 271AAB, the show cause notice issued in routine manner charging the offences prescribed u/s.271(1)(c) of the Act cannot be considered a valid notice in the eyes of law and accordingly, the levy of penalty on the basis of such defective notice is liable to be held as void abinitio. Identical issue is dealt by the Kolkata ITAT in the case of Sushil Kumar Paul(supra), wherein, after considering the facts, the Co-ordinate bench vide paras 10 to 14 has observed as under:

"10. From going through the above notice issued to the assessee on 28.12.2017, we find that there is no mention about various conditions provided u/s 271AAB of the Act. The Id. AO has very casually used the proforma used for issuing notice before levying penalty u/s 271(1)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the section 271AAB of the Act in the notice, it does not talk anything about the provisions of section 271AAB. Therefore, certainly such notice has a fatal error and technically is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee.

11. In the case of DCIT vs R. Elangovan Ltd. (supra), Co-ordinate Bench, Chennai while dealing with the legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act had observed that:

"It is clear from the Sub Section (3) of Section 271 AAB that Sections 274 and Section 275 of the Act shall, so far as may be, apply. Sub Section (1) of Section 274 of the Act mandates that order imposing penalty has to be imposed only after hearing the assessee or giving a assessee opportunity of hearing. Opportunity that is to be given to the assessee should be a meaningful one and not a farce. Notice issued to the assessee reproduced (supra), does not show whether penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of income or for having undisclosed income within the meaning of Section 271AAB of the Act. Notice in our opinion was vague. Hon'ble Karnataka High Court in the case of SSA's Emerald Meadows (supra) relying in its own judgment in the case of Manjunatha Cotton and Ginning Factory (supra) had held as under:-

"2. This appeal has been filed raising the following substantial questions of law. Whether, omission if 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 despite 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 CIT 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".

In the earlier case of Manjunatha Cotton and Ginning Factory (supra) their lordship had observed as under:-

"Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) , i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law;

The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee) taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings; The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared invalid in the penalty proceedings".

View taken by the Hon'ble Karnataka High Court in the above judgment was indirectly affirmed by the Hon'ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA's Emerald Meadows (supra), specifically observing that there was no merits in the petition filed by the Revenue. Considering the above cited judgments, we hold that the notice issued u/s.274 r.w.s. 271AAB of the Act, reproduced by us at para 5 above was not valid. Exconsequenti, the penalty order is set aside.

12. The view taken by the Co-ordinate Bench of Chennai in the case of DCIT vs Rs. Elangovan 1199/CHNY/2017 order dated 05.04.2018 has been subsequently followed by the Co-ordinate Bench of Jaipur in the case of Ravi Mathur vs DCIT, ITA 969/JP/2017 holding that such show cause notice issued u/s 274 r.w.s 271AAB of the Act are not sustainable in law.

13. We, therefore, respectfully following the judgement of decision of Co-ordinate Bench of Chennai in the case of DCIT vs R. Elangovan (supra) and Jaipur Bench in the case of Ravi Mathur vs

DCIT (supra) and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued u/s 274 of the Act does not refer to the charges of provision of section 271AAB of the Act makes the alleged notice defective and invalid and thus deserves to be quashed. Since the penalty proceeding itself has been quashed the impugned penalty of Rs. 83,02,410/- stands deleted. Thus the assessee succeeds on legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act.

14. Since the penalty u/s 271AAB has been deleted on the preliminary legal points, other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are rendered academic in nature. Thus grounds raised on merits are dismissed as infructuous. Appeal of the assessee for the assessment year 2016-17 is allowed 15. In the result, the appeal of the assessee is partly allowed.”

12. This order of ITAT Kolkata in the case of Sushil Kumar Paul (supra) is followed by ITAT Delhi Benches in the case of Landcraft Developers Pvt Ltd. (supra), wherein, the Tribunal vide its order dated 8.1.2024 in paras 8 to 9 has observed as under:

“8. From the above, it could be seen that there is a greater onus casted on the Revenue to specifically mention in the show cause notice itself as to what offence the assessee has committed and also to mention the rate of penalty that is sought to be levied by the Assessing Officer on the assessee i.e., 10% or 20% or 30% or 60% of undisclosed income, as the case may be. If none of these preliminary informations are mentioned in the show cause notice, then the show cause notice issued by the Ld. AO becomes completely defective and consequentially fatal and would vitiate the entire penalty proceedings. This issue, in any case, is no longer res integra in view of the decision of Kolkata Tribunal in the case of Sushil Kumar Paul vs. ACIT in ITA No.2274/Kol/2019 for A.Y. 2016-17 dated 15/12/2022 wherein it was held as under:-

“10. From going through the above notice issued to the assessee on 28/12/2017, we find that there is no mention about various conditions provided u/s 271AAB of the Act. The Id. AO has very casually used the proforma used for issuing notice before levying penalty u/s 271(1)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the section 271AAB of the Act in the notice, it does not talk anything about the provisions of section 271AAB. Therefore, certainly such notice has a fatal error and technically is not a correct notice in the

eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee.'

9. In view of the aforesaid observations and respectfully following the judicial precedent relied upon herein above, we hold that the penalty notice issued on 31/03/2015 is defective and, accordingly, entire penalty proceedings gets vitiated. Hence, the penalty levied u/s 271AAB of the Act in the facts and circumstances of the instant case would have no legs to stand in the eyes of law. Accordingly, the grounds raised by the assessee are allowed on this technical aspect."

13. Similarly, Hon'ble High Court of Calcutta in the case of Industrial Safety Products Pvt Ltd (supra) has held the issue of defect in the notice for initiation of penalty u/s.271AAB in favour of the assessee by observing as under:

"Section 273, read with section 271 of the Income Tax act, 1961-Penalty – procedure for imposition of (scope of provision)-Assessment year 2015-16-Assessing Officer initiated penalty proceedings against assessee by issuance of notice under section 274 read with section 271-Whether since impugned notice did not furnish any particulars and all relevant columns had been left blank, notice was bad in law and initiation of penalty proceedings was vitiated-Held, Yes"

14. After considering the facts and following the judicial pronouncements, we are of the considered view that in the present case, the Assessing Officer has not issued a valid notice for initiation penalty proceedings u/s.271AAB and show cause the assessee that it has concealed the particulars of income or furnished inaccurate particulars of such income, though there is no such scope for these offences under the scheme of penalty u/s.271AAB of the Act and, therefore, this fatal error makes the notice as defective and invalid and technically not a correct notice in the eye of laws as it intends to penalise the assessee without specifying the offence as prescribed u/s.271AAB of the Act. Therefore, consequent order passed levying penalty u/s.271AAB of the Act is hereby quashed. Consequently, Ground No.s 1 & 2 are allowed.

15. Since In Ground Nos.1 & 2, we have allowed the assessee's legal ground, therefore, ground No.3 has become academic and requires no adjudication.

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

Order dictated and pronounced in the open court on 16/12/2024.

Sd/-

sd/-

**(George Mathan)**  
**JUDICIAL MEMBER**

**(Manish Agarwal)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 16/12/2024

B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The appellant; Panda Infratech Limited, Plot No.620, Janpath, Saheed Nagar, Bhubaneswar
2. The Respondent: Dy. Commissioner of Income Tax, Central Circle-2, Bhubaneswar
3. The CIT(A)-Bhubaneswar-2.
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT,
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.Secretary  
**ITAT, CUTTACK**