IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

I.T.A. No. 81/Ran/2022
(Assessment Year-2015-16)

Rinku Singh, CA Akshay Ringasia, Suite No. 3, 2nd Floor, Aviskar Bumra Enclave, Diagonal Road, Bistupur, Jamshedpur-831001. **PAN No. AKXPS 9628 K**	Vs.	D.C.I.T., Central Circle, Jamshedpur.
Appellant/ Assessee		Respondent/ Revenue

I.T.A. No. 82/Ran/2022
(Assessment Year-2015-16)

Nitu Singh, CA Akshay Ringasia, Suite No. 3, 2nd Floor, Aviskar Bumra Enclave, Diagonal Road, Bistupur, Jamshedpur-831001. **PAN No. AVGPS 6533 B**	Vs.	D.C.I.T., Central Circle, Jamshedpur.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	None
Department represented by	Shri Khubchand T. Pandya, Sr.DR
Date of hearing	05/02/2025
Date of pronouncement	20/02/2025

O R D E R

PER: RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER:

1. These appeals by the assessee(s) are directed against the separate orders of the learned Commissioner of Income Tax (Appeals)-3, Patna, [in short, the ld. CIT(A)] both dated 27/07/2022 for the Assessment Year (AY) 2015-16. Both these appeals of the assessees are common facts and grounds, therefore, with the consent of parties, these appeals are clubbed and heard together and being decided by this consolidated order. For appreciation of facts, we take ITA No.

81/Ran/2022 for A.Y. 2015-16 as a lead case. In this appeal, the assessee has raised following grounds of appeal:

> *"1. That under the facts and circumstances of the case, no penalty u/s 271(1)(c) should had been levied, hence, the impugned order levying penalty of Rs. 7,39,160/- needs to be quashed.*
> *2. That the very initiation of penalty is bad in law as the Ld. AO has failed to record a proper or transparent satisfaction in his notice while initiating proceedings under section 271(1)(c), thus rendering the entire penalty proceedings null and void.*
> *3. That under the facts and circumstances, the initiation of penalty proceedings under section 271(1)(c) are illegal and unsustainable in law, in view of legal interpretation and the settled judicial pronouncement by various courts and benches of tribunals.*
> *4. That without prejudice, by no stretch of imagination could the assessee be subjected to penalty for concealment when the return income itself was accepted without modification and there was no undisclosed income which is sine qua non for invoking section 271(1)(c).*
> *5. That the assessee craves lave to add, alter or amend any ground before or at the time of hearing."*

2. At the time of hearing, none has appeared on behalf of assessee, though, the notice of hearing have been duly served on the given address.

3. Submissions of the ld. Sr.DR for the revenue were duly considered and the documents produced have been perused while taking the matter as heard.

4. We find from perusal of record that there is delay of one day in filing of this appeal of the assessee before the Tribunal. Impugned order was passed by the ld. CIT(A) on 27/07/2022, however, this appeal is filed on 26/09/2022, so there is only one day delay in filing this appeal. The delay is not inordinate, therefore, we condone the delay.

5. In the grounds of appeal, the assessee has claimed that the ld. CIT(A) erred in confirming the order passed by the ld. DCIT, Central Circle Jamshedpur, 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 Hon'ble Supreme Court of India.

6. The facts of the case are that a search operation was conducted under Section 132(1) of the Income tax Act, 1961 (in short, the Act) in this case on 17.08.2017 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 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 AO imposed the penalty accordingly and this order was upheld by the ld. CIT(A).

7. Before the ld.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 furnishing inaccurate particulars of income. Accordingly, the show cause notice was claimed to be defective on which no penalty could be imposed. The ld.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.

8. Before us, none has appeared on behalf of assessee but filed a written submission in support of the grounds of appeal. In the written submission, it has claimed that during assessment proceedings u/s 153A, all the details were provided to the ld. 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 ld. 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 assessee 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 proceedings.

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

10. 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 striked 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 ld. 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."

11. 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.

12. In the result, this appeal filed by the assessee is allowed.

13. Now we shall take ITA No.82/Ran/2022 for the A.Y. 2015-16. We find that in this appeal, the assessee has raised similar grounds of appeal. We also find that in this appeal, there is also a delay of 1 day in filing appeal before the Tribunal. The facts of this appeal are common to the facts and grounds as raised in ITA No. 81/Ran/2022 for A.Y. 2015-16, which we have condoned the delay of one day and allowed the appeal of assessee by directing the Assessing Officer to delete the penalty. Therefore, keeping in view the principle of consistency on similar set of facts, the delay of one day in filing of this appeal before the Tribunal is condoned and this appeal of assessee is also allowed with similar direction. In the result, grounds of assessee's appeal are allowed.

14. In the result, both these appeals of assessee are allowed.

Order announced in open court on 20th February, 2025.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	(RATNESH NANDAN SAHAY)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ranchi, Dated: 20/02/2025
**Ranjan*

Copy to:
1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi