

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.2526/Del/2022
(ASSESSMENT YEAR 2012-13)

Shree Krishna Vanaspati Industries Pvt. Ltd., Room No.221, Manish Plaza, 20, Ansari Road, Darya Ganj, New Delhi-110002 PAN-AAICS1016R (Appellant)	Vs.	Income Tax Officer, Ward-23(3), New Delhi. (Respondent)
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Assessee by	Shri Vinit Garg, Advocate
Department by	Shri Sahil Kumar Bansal, Sr. DR
Date of Hearing	11/02/2025
Date of Pronouncement	21/02/2025

ORDER

PER MANISH AGARWAL, AM:

This is appeal filed by the Assessee against the order of Commissioner of Income Tax (Appeals)-8, New Delhi ('the CIT(A)' for short) date 10/03/2017 in Appeal No. 342/15-16 for Assessment Year 2012-13.

2. Brief facts of the case are that assessee is a company and assessment was completed vide order dated 30.03.2015 by making various additions. Thereafter, the impugned order of penalty u/s 271(1)(c) of the Act was passed wherein penalty of Rs.15,64,288/- was levied u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. During the course of hearing, the Ld. AR of the assessee submit that at the time of initiation of the proceedings u/s 271(1)(c) of the Act, notice was issued to the assessee vide notice dated 30/03/2015. The said notice is reproduced as under:

30/03/2015

To

Shree Krishna Vanaspati Industries Pvt. Ltd.
Manish Plaza, 20, Ansari Road,
Darya Ganj,
New Delhi-110002

Whereas in the course of proceedings before me for the assessment year 2012-13 it appears to me that you:-

*have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.

"have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.

You are hereby requested to appear before me at 11:30 A.M./P.M. on 200 and show cause why an order imposing a penalty on you should not be made under section 271 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.

Vinod Kumar
Assessing Officer
Income Tax Officer
Ward-23(3), New Delhi"

Subsequently another notice was issued on 31.08.2015.

“To

Dated: 31.08.2015

*M/S Shree Krishna Vanaspati Industries Pvt. Ltd.
221, Munish Plaza, 20 Anasri Road,
Daryaganj, Delhi*

Whereas in the course of proceedings before me for the assessment year-2012-13, it appears to me that you:-

"have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4, and 5.

You are hereby requested to appear before me at 04.30 P.M on 04/09/2015 and show cause why an order imposing a penalty on you should not be made under section 271 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

*Vinod Kumar
Income Tax Officer,
Ward-23(3), New Delhi”*

3. Ld. AR submit that from the perusal of the both notices it could be seen that in both notices, it was not specified whether the penalty proceedings were initiated for concealment of particulars of income or for furnishing inaccurate particulars of income. He thus, by following the order of Hon’ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory reported in (2013) 359 ITR 565 requested for the deletion of the penalty being initiating without specifying the limb on which the penalty proceedings were initiated.

4. On the other hand, Ld. DR vehemently supported the orders of the lower authorities and submitted that the AO has recorded the satisfaction in the assessment order that assessee has furnished inaccurate particulars of income and penalty was also levied for furnishing inaccurate particulars of income, therefore, the order of levy of penalty deserves to be upheld and merely for not struck off the limb in the penalty notice, such order should not be canceled.

5. We have heard the rival submissions and perused the materials available on record. From the perusal of the notices issued for initiation of the penalty proceedings, we find that AO has not specified the limb of which the satisfaction is recorded for initiation of penalty proceedings. The assessee was not show cause to explain whether the penalty is going to be levied for furnishing inaccurate particulars of income or for concealment of income.

6. 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 both the notices issued u/s.274(1) r.w.s.271(1)(c) of the Act as reproduced above, it was not 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 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 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 had in law and. invalid in spite 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 derision 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."*

7. As observed above, 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 notices in this case have 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.

8. 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 (supra) 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 notices under section 274 r.w.s. 271(1)(c) of the Act without striking off the irrelevant words, as reproduced above, the penalty proceedings shows the non-application of mind by the Assessing Officer and is, thus, unsustainable.

9. 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.

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

Order pronounced on 21/02/2025.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 21/02/2025

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI