

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

**Before Shri George George K, Vice-President
&
Shri Inturi Rama Rao, Accountant Member**

ITA No.767/Coch/2024 :Asst.Year 2015-2016

Sri.Riyas Nellyyote Nellyyote House PO Paleri, Kuttiadi Kozhikode – 673 508. PAN : BFGPR4668D.	v.	The Assistant Commissioner of Income-tax, Circle 2(1) Kozhikode.
(Appellant)		(Respondent)

Appellant by : Sri.C.B.M.Warrier, CA
Respondent by : Smt.Leena Lal, Sr.AR

Date of Hearing :07.04.2025	Date of Pronouncement : 08.04.2025
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ORDER

Per George George K, Vice-President :

This appeal at the instance of assessee is directed against the order of the National Faceless Assessment Centre / Commissioner of Income Tax (Appeals) ["CIT(A)"] dated 04.07.2024 passed u/s. 250 of Income Tax Act, 1961 ("the Act" hereinafter). The relevant assessment year is A.Y. 2015-2016.

2. The order of the CIT(A) arises out of the order of the Assessing Officer ("AO") imposing penalty u/s.271(1)(c) of the Act amounting to Rs.10,95,880.

3. The grounds raised read as follows:-

“The appellant is RIYAS NELLIYOTE, Nellyyote House, Po:Paleri, Kuttiadi-673 508, and in regard to assessment year 2015-16, the Asst Commissioner of Income Tax, Circle-2(1), Kozhikode, has imposed a penalty of Rs. 10,95,880/- under section 271(1)(c) of the Act, as per order dt.25.04.2019.

2. The appellant went on appeal before the Commissioner of Income Tax (Appeals), and as per order in DIN No.ITBA/NFAC/S/250/2024-25/1066407075(1) dt.04.07.2024, the CIT(A), NFAC, Delhi, has dismissed the appeal filed by the appellant.

3. The NOTICE issued by the Assessing Officer for imposing penalty u/s.271(1)(c) of the Act has not specifically mentioned, whether the penalty is proposed in respect of concealment of income or for furnishing inaccurate particulars of income. In the absence of specific and particular mentioning of the reason for the penalty, the penalty notice itself is invalid and as a result the penalty imposed u/s.271(1)(c), without specific finding, is illegal and liable to be cancelled.

4. For the above reasons and court decisions mentioned in the Statement of Facts and other arguments that may be put forward at the time of hearing, the appellant submit that the penalty imposed u/s.271(1)(c) is illegal and may be cancelled.”

4. Brief facts of the case are as follows:

The assessee an individual. For the assessment year (AY) 2015-2016, the assessment was completed u/s.143(3) r.w.s. 147 of the Act by making addition to the capital gains at Rs.29,92,220 after allowing exemption u/s.54F of the Act. During the course of assessment proceedings, the AO also initiated penalty u/s.271(1)(c) of the Act vide notice dated 09.10.2018 and penalty was imposed vide order dated 25th April, 2019 amounting to Rs.10,95,880.

5. Aggrieved by the order of the Assessing Officer, imposing penalty u/s.271(1)(c) of the Act, the assessee preferred an appeal before the first appellate authority. Before the first appellate authority, the assessee raised a plea that the notice issued u/s.274 of the Act for initiating penalty proceedings u/s.271(1)(c) of the Act is bad in law since it has not struck off the irrelevant portion whether penalty proceedings has been initiated for “concealment of income” or “furnishing of inaccurate particulars of income”. The CIT(A) however rejected the contentions of the assessee and held that the defect in the notice is curable defect as per the provisions of sec.292B of the Act. In support of this conclusion, the CIT(A) relied on various judicial pronouncements.

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR placed on record copy of the notice issued u/s.274 of the Act, copy of the assessment order where penalty proceedings have been initiated, etc. The learned AR reiterated the submissions made before the CIT(A). Further, the learned AR submitted that the issue in question is squarely covered by the recent judgment of the Hon’ble jurisdictional High Court in the case of PCIT v. Shri Ambady Krishna Menon (2024) 163 taxmn.com 141 (Ker), wherein identical issue has been decided in favour of the assessee.

7. The learned Departmental Representative supported the order of the AO imposing penalty and the CIT(A) sustaining the same.

8. We have heard rival submissions and perused the material available on record. Copy of the assessment order dated 09.10.2018 passed u/s.143(3) r.w.s. 147 of the Act is placed on record. On perusal of the same, it is seen that it has merely mentioned that penalty proceedings have been initiated separately. A copy of the notice issued u/s.274 of the Act for is also placed on record. On perusal of the notice, we find it is defective and the same has not specified the particular ground on which the AO has proceeded against the assessee for imposing of penalty, viz., whether it is for “concealment of income”, “furnishing inaccurate particulars of income” or for both. The Hon’ble jurisdictional High Court in the case of PCIT v. Shri Ambady Krishna Menon (supra) had held as follows:-

“11. We also find merit in the finding of the Appellate Tribunal in Annexure 'I' order that the notice proposing penalty, that was issued to the respondent/assessee, was inherently defective, in that, it had not specified the particular ground on which the Revenue was proceeding against the assessee for the imposition of the penalty. Thus, in any view of the matter, we find that the imposition of penalty under Section 271(1)(c) of the I.T. Act on the respondent/assessee for the assessment year 2011-12 cannot be legally sustained.”

9. In the instant case, it is an undisputed fact that the assessment order and the notice issued u/s.274 is vague and is not clear under which limb the penalty has been initiated. Therefore, in the light of the judgment of the Hon’ble jurisdictional High Court in the case of PCIT v. Shri Ambady Krishna Menon (supra), we hold that the notice issued u/s.274 is bad in law and consequentially the order imposing penalty

u/s.271(1)(c) of the Act arising therefrom is unsustainable and we quash the same. It is ordered accordingly.

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

Order pronounced on this 8th day of April, 2025.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(George George K)
VICE-PRESIDENT

Cochin; Dated : 08th April, 2025.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT, Cochin.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin