

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER,
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA Nos. 663 to 665/Ind/2024
Assessment Years : 2013-14 to 2015-16

Riyaz Qureshi, 10 Kailash Marg, Ice Factory, Jhabua (Appellant/Assessee)	<u>बनाम/</u> Vs.	ITO, Jhabua (Respondent/Revenue)
PAN: AADPQ0375P		
Assessee by	Shri Ram Gilda, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.05.2025	
Date of Pronouncement	15.05.2025	

आदेश / O R D E R

Per Bench:

The captioned three (3) appeals have been preferred by assessee assailing three separate orders of first-appeal for assessment-years ["AY"] 2013-14 to 2015-16, all dated 18.07.2024 and all passed by learned Commissioner of Income-tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arise out of respective three penalty-orders all dated 27.06.2018 and all passed by learned ITO, Jhabua ["AO"] u/s 271(1)(c) of the Income-tax Act, 1961 ["the Act"].

2. The learned Representatives of both sides agree that all three appeals involve identical issue of the penalty imposed/upheld by lower-authorities u/s 271(1)(c) and the underlying facts for adjudication are also identical. Hence, these were heard together and are being disposed of by this consolidated order for the sake of clarity, convenience and brevity. The *ITA No. 663/Ind/2024 of AY 2013-14* is taken as a lead case and learned Representatives agree that the adjudication made therein shall apply to other two appeals as well.

ITA No. 663/Ind/2024 of AY 2013-14:

3. The grounds raised in this appeal are as under:

"1. That the penalty levied and sustained of Rs.30,700/- is illegal, wrong and without authority o law and jurisdiction.

2. That the penalty of Rs.30,700/- levied and sustained is unjustified looking to the facts of he case."

Ground No. 1:

4. This is a legal ground in which the assessee is claiming that the penalty is illegal, wrong and without authority of law and jurisdiction. For this ground, Ld. AR drew our attention to the show-notice dated 26.12.2017 issued by AO to assessee u/s 274 read with section 271(1)(c), the same is scanned and re-produced here:

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

PAN NO. AADPQ0375P

Office of the
Income Tax Officer
BSNL, Building, IInd Floor,
Ratanpura, Jhabua (M.P.)-457661
Dated:-26-12-2017

To,
Shri Riyaz Qureshi
12, MOLANA AZAD MARG, JHABUA


Whereas in the course of proceedings before me for the assessment year 2013-14 it appears to me that you :-

*Have without reasonable cause failed to furnish me return of Income with you were required to furnish by a notice given under section 22(1)/22(2)/34 of the India Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961, No. dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the side section 139(1) or by such notice.

*Have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the India Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act 1961. No. dated

*Have concealed the particulars of your Income or furnished inaccurate particulars of such Income .

You are hereby requested to appear before me at 11.30 A.M./P.M. on 11/01/2018 And show cause why an order imposing a penalty on you should not be made under section 271(1)(c) 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 side date which will be considered before any such order is made under section 271(1)(c).


(P.C. Tirkey)
Income Tax officer, Jhabua

5. Referring to above notice, Ld. AR submitted that the notice u/s 274 sets in motion the penalty-proceeding. According to Ld. AR, the notice issued by AO is very much vague in as much it contains stereotype language of section 271(1)(c). The Ld. AR contended that by mentioning that the assessee *"Have concealed the particulars of your income or furnished inaccurate particulars of such income"* and without striking the inapplicable part, there is no specific charge mentioned by AO. According to Ld. AR, there are innumerable decisions of the Hon'ble Courts and ITAT where it has been loudly held that if the show-cause notice issued u/s 274 does not spell out the specific charge of default committed by assessee, the notice and subsequent proceeding founded thereon are invalid. In support of his contention, the Ld. AR placed a strong reliance on the decision of Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of ***Pr.CIT-I, vs. Kulwant Singh Bhatia***, ITA No. 9 to 14 of 208, order dated 9th May 2018, wherein it was held as under:

"8. In the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra), it was observed by the Karnataka High Court in para 59 that the practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under Section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Even in the matter of search case where penalty is levied under Explanation 5A to Section 271(1)(c), it was held by the Karnataka High Court that the show-cause notice under Section 274 was defective as it does not spell out the ground on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. The decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) was further followed by the Karnataka High Court in the case of CIT V/s. SSA'S Emerald

Meadows, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015), the High Court has dismissed the appeal of the revenue by observing that the Tribunal has allowed the appeal of the assessee holding that the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Act of 1961 was bad-in-law as it did not specify which limb of Section 271(1)(c) of the Act of 1961, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra). It is further pointed out that the **SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of CIT V/s. SSA'S Emerald Meadows (supra) was dismissed**. In the case of **CIT V/s. Suresh Chandra Mittal (2000) 251 ITR 9 (SC)**, the Apex Court has upheld the decision of **M.P. High Court** wherein, in similar circumstances, it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. In the present case, in show-cause notice the Assessing Officer has not specified specifically charges, there was no such mention.

11. On due consideration of the arguments of the learned counsel for the appellant, so also considering the fact that the ground mentioned in show-cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the learned Tribunal has rightly relying on the decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) and CIT V/s. SSA'S Emerald Meadows (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA.No(s). 9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed."

[Emphasis supplied]

6. Ld. AR also drew us to the judgements of (i) **Manjunatha (Hon'ble Karnataka High Court)**, (ii) **SSA's Emerald Midow (Hon'ble Karnataka High Court as approved by Hon'ble Supreme Court)**, and (iii) **Suresh Chand Mittal (Hon'ble Supreme Court)** relied by Hon'ble Jurisdictional High Court in **Kulwant Singh Bhatia (supra)**. Ld. AR submitted that the present case of assessee stands fully covered by binding decision of Hon'ble jurisdictional High Court in **Kulwant Singh Bhatia (supra)** and in view of

the same, the penalty notice issued and consequently the penalty-order passed by AO are invalid and must be quashed.

7. Replying to above, Ld. DR for revenue drew us to Page 2 of assessment-order where in the AO has mentioned thus:

“इस प्रकार करदाता द्वारा अपनी आयकर विवरणी धारा 148 के अंतर्गत जारी सूचना पत्र के पश्चात् दाखिल की गई है। इस प्रकार करदाता द्वारा अपनी आय का सही-सही विवरण एवं तथ्य प्रस्तुत नहीं कर आय को छिपाया गया था। तदनुसार निर्धास्ती के विरुद्ध धारा 271 (1) (c) के तहत शास्ति की कार्यवाही पृथक से प्रारंभ की जाती है।”

Ld. DR submitted that the AO has made a clear-cut noting in above para of assessment-order that the assessee concealed true particulars of his income. He submitted that the penalty proceedings originate from assessment-order and the above noting made by AO in assessment-order leaves no doubt or ambiguity as to the default committed by assessee. He submitted that the notice issued by AO u/s 274 must be read in conjunction with the noting made by AO in assessment-order and when looked this way, it is quite clear that the AO has specified the charge of default committed by assessee i.e. income was concealed by assessee. Ld. DR therefore prayed that the assessee's contention that the charge is not spelled out or not made known to assessee, is meritless and must be rejected.

8. Ld. DR next drew us to following three decisions given by Hon'ble Courts in favour of revenue in which the similar contention as raised by present assessee was turned down and penalty was upheld:

- (i) PCIT Vs. Thakur Prasad Sao & Sons (P) Ltd. (2024) 163 taxmann.com 449 (Calcutta)
- (ii) Veena Estate (P) Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bombay)
- (iii) Sundaram Finance Ltd. Vs. ACIT, Chennai (2018) 93 taxmann.com 250 (Madras) – Assessee's SLP has been rejected by Hon'ble Supreme Court.

9. In rejoinder, Ld. AR filed a Written-Synopsis distinguishing the decisions cited by Ld. DR. We present below the submission made by Ld. AR in a very brief and precise manner:

- (i) **PCIT Vs. Thakur Prasad Sao & Sons (P) Ltd. (2024) 163 taxmann.com 449 (Calcutta)** – The order is dated 02.05.2024 but the Hon'ble High Calcutta High Court has not considered the decision of ***Kulwant Singh Bhatia (supra)*** dated 09.05.2018 decided by Hon'ble Jurisdictional High Court of Madhya Pradesh. Further, in Para No. 6 & 38 of order, the Hon'ble Calcutta High Court has categorically noted that the assessee participated in response to the penalty proceedings initiated by AO through notice u/s 274. The Hon'ble High Calcutta High Court has also re-produced the submissions made by

assessee to AO in response to notice. However, in present case of assessee, in Para No. 4 & 5 of penalty-order, the AO has clearly mentioned that the assessee did not participate in response to the notice dated 26.12.2017 issued by AO u/s 274. Therefore, the decision of Hon'ble Calcutta High Court is not applicable.

- (ii) **Veena Estate (P) Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bombay)** – This case had unique facts. The assessee raised the legal plea of 'absence of charge' in the notice issued by AO after 30 years after filing appeal before Hon'ble High Court. Therefore, the Hon'ble High Court came heavily and rejected assessee's contention. Ld. AR submitted that the ITAT, Mumbai has already distinguished this decision in **ITA No. 1415/Mum/2024 – Lyka Labs Limited Vs. DCIT, order dated 06.06.2024**, relevant para of ITAT's order is reproduced below:

"10. From the perusal of the documents forming part of the paper book, we find that in the appeal against the penalty order dated 30/03/2016 passed under section 271(1)(c) of the Act before the learned CIT(A), the assessee specifically raised the submission regarding the defect in the notice issued under section 274 r/w section 271(1)(c) of the Act as the AO did not mention under which the limb penalty under section 271(1)(c) of the Act has been levied. Further, we find that the assessee also, inter-alia, placed reliance upon the decision of the Hon'ble jurisdictional High Court in Pr. CIT (Central) v. Goa Coastal Resorts and Recreation (P.) Ltd. [2020] 113 taxmann.com 574/272 Taxman 157 (Bom.) in support of its submission. However, we find that the learned CIT(A) vide order dated 28/02/2020 dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act without dealing with the aforesaid submission of the assessee. In further appeal before the Tribunal, we find that the assessee again raised a ground that the penalty proceedings are bad in law on the basis that the show cause notice is defective. The coordinate bench of the Tribunal vide order dated 05/03/2021 passed in assessee's appeal in ITA No. 1682-1684/Mum./2020,

for the assessment years 2010-11, 2011-12 and 2014-15, restored the matter to the file of the learned CIT(A) for fresh adjudication and for passing a speaking order on factual aspects. We find that being aggrieved by the Tribunal's order, the assessee filed an appeal before the Hon'ble jurisdictional High Court under section 260A of the Act, wherein again the assessee raised the legal issue and submitted that the same is squarely covered by the decision of the Hon'ble jurisdictional High Court. The Hon'ble High Court, vide order dated 08/11/2023, passed in ITA (L) No. 1009, 1014, and 1029 of 2022, permitted the assessee to withdraw its appeal and further directed the learned CTT(A) to dispose of the assessee's appeals as early as possible. We further find that even in the second round of proceedings before the learned CIT(A), the assessee made its submission on the aforesaid jurisdictional aspect. However, as evident from the record, the learned CIT(A), vide impugned order, rejected the submission of the assessee on the basis that this issue was never specifically pressed by the assessee in its grounds of appeal and the statement of facts. Therefore, from the aforesaid factual matrix, we find merit in the submissions of the assessee that the issue as regards the defect in the penalty notice has been raised since the first round of appellate proceedings against the initiation of penalty under section 271(1)(c) of the Act. **Accordingly, we are of the considered view that the decision of the Hon'ble jurisdictional High Court in Veena Estate (P) Ltd. (supra) does not support the plea of the learned DR in the present case, as the same has been rendered in a completely different factual matrix, where after 30 years the taxpayer sought to raise ground as regards the defect in notice issued under section 274 r/w section 271(1)(c) of the Act before the Hon'ble High Court for the first time."**

(iii) **Sundaram Finance Ltd. Vs. ACIT, Chennai (2018) 93**

taxmann.com 250 (Madras) – We re-produce below Para 16 of this order:

*"16. We have perused the notices and we find that the relevant columns have been marked, more particularly, when the case against the assessee is that they have concealed particulars of income and furnished inaccurate particulars of income. Therefore, the contention raised by the assessee is liable to be rejected on facts. That apart, this issue can never be a question of law in the assessee's case, as it is purely a question of fact. Apart from that, the assessee had at no earlier point of time raised the plea that on account of a defect in the notice, they were put to prejudice. All violations will not result in nullifying the orders passed by statutory authorities. If the case of the assessee is that they have been put to prejudice and principles of natural justice were violated on account of not being able to submit an effective reply, it would be a different matter. **This was never the plea of the assessee either before the Assessing Officer or before the first Appellate Authority or before the Tribunal or before this Court when the Tax Case Appeals were filed and it was only after 10 years when the***

appeals were listed for final hearing, this issue is sought to be raised. Thus on facts, we could safely conclude that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under Section 274 r/w. Section 271 of the Act. Therefore, principles of natural justice cannot be read in abstract and the assessee, being a limited company, having wide network in various financial services, should definitely be precluded from raising such a plea at this belated stage."

Thus, the assessee raised plea before Hon'ble High Court for the first time and that too after 10 years when the appeal was listed for final hearing. Therefore, this decision is also not applicable.

10. Finally, Ld. AR emphasized that the decision in ***Kulwant Singh Bhatia (supra)*** is given by Hon'ble Jurisdictional High Court and it is binding upon the ITAT, Indore Bench which falls within the state of Madhya Pradesh. Therefore, in any case, this Bench of ITAT would have to follow the decision of ***Kulwant Singh Bhatia (supra)***.

11. We have considered rival submissions of both sides and perused the case record including the show-cause notice issued and penalty-order made by AO. We have also examined the contention raised by assessee in the light of decisions quoted before us. The assessee is contending that the show-cause notice issued by AO u/s 274 does not specify the charge for which penalty u/s 271(1)(c) would be levied. On perusal of the show-cause notice issued by AO as re-produced in earlier para, we observe that the notice contains thus:

"Whereas in the course of proceedings before me for the assessment year 2013-14 it appears to me that you :-

****Have without reasonable***

****Have without reasonable cause***

✓ *Have concealed the particulars of your income or furnished inaccurate particulars of such Income.

Thus, the AO mentioned three points in the notice out of which first two points are not relevant and we are concerned with last point only which is ticked as "✓" by AO. In this last point which is relevant to us, the AO has noted both limbs of section 271(1)(c) i.e. the assessee has concealed the particulars of income or furnished inaccurate particulars of income without striking off any one. Clearly therefore, the AO has failed to specify the exact charge against assessee and in this situation, the decision of Hon'ble Jurisdictional High Court of Madhya Pradesh in ***Kulwant Singh Bhatia (supra)*** become applicable according to which the proceeding of penalty conducted by the AO is illegal and cannot be sustained. The three decisions relied by Ld. DR in favour of revenue have been successfully distinguished by Ld. AR as discussed by us in foregoing para of this order; we do not reproduce the same discussion here to avoid repetition. Ld. DR has, however, raised an important point that in the assessment-order, the AO has clearly mentioned that the assessee concealed income and since penalty u/s 271(1)(c) has its origin from assessment-order, it has to be construed that the AO has specified charge in the assessment-order itself. We are afraid to accept such a contention of Ld. DR for the reason that in the scheme of Income-tax Act, 1961, the assessment-proceeding and penalty-proceedings

are distinct and independent. For example, there are separate procedures for initiating assessment proceedings and penalty proceedings; there are separate notices for two proceedings; there are separate orders for concluding two proceedings and there are separate appellate provisions for the orders passed in two proceedings. The Hon'ble Supreme Court has also held in ***Dilip N. Shroff Vs. JCIT, Civil Appeal 2746 of 2007 order dated 18.05.2007*** as under:

"51. The order imposing penalty is quasi-criminal in nature and, thus, burden lies on the department to establish that the assessee had concealed his income. Since burden of proof in penalty proceedings varies from that in the assessment proceeding, a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceeding constitute good evidence in the penalty proceeding. In the penalty proceedings, thus, the authorities must consider the matter afresh as the question has to be considered from a different angle. [Soe Anantharam Veerasinghaiah & Co. v. C.I.T., Andhra Pradesh, 1980 Supp SCC 13]."

12. In view of above discussions and for the reasons stated therein, we are satisfied that the penalty imposed by AO is not legal. Accordingly, we quash the penalty-proceeding at the very threshold on legality aspect itself as claimed by assessee. The ground raised by assessee is allowed.

Ground No. 2:

13. This ground deals with merit of the penalty imposed/upheld by lower-authorities. During hearing, neither side has made any submission qua this ground. Accordingly, this ground is treated as non-pleaded and no adjudication is required from us.

14. In final conclusion, the appeal filed by assessee for AY 2013-14 is allowed. We accordingly delete the penalty imposed by AO. The assessee succeeds in this appeal.

ITA No. 664 & 665/Ind/2024 of AY 2014-15 & 2015-16:

15. The learned Representatives of both sides have agreed that the facts and issue in these appeals are identical to *ITA No. 663/Ind/2024 of AY 2013-14* and therefore the same adjudication shall apply. Accordingly, we apply the same adjudication as made in preceding part of this order and allow these appeals of AYs 2014-15 and 2015-16 also. The respective penalties imposed by AO are hereby deleted. The assessee succeeds in these appeals.

16. Resultantly, all these appeals are allowed.

Order pronounced in open court on 15/05/2025
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Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15/05/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore