

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "एस एम सी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.1279/दिल्ली/2025(नि.व. 2012-13)

ITA No.1279/DEL/2025 (A.Y.2012-13)

Ramesh Kumar,  
House No.2027, Opposite Civil Hospital,  
Nissing, Karnal, Haryana 132024

PAN: AZOPK-6953-F

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer,  
Aayakar Bhawan, 2<sup>nd</sup> Floor, Sector 12,  
Karnal, Haryana 132001

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri R R Singla, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by : Shri Manoj Kumar, Sr. DR

सुनवाई की तिथि/ Date of hearing : 20/05/2025

घोषणा की तिथि/ Date of pronouncement: : 20/05/2025

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against an ex-parte order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 04.01.2025, for assessment year 2012-13.

2. Shri R R Singla, appearing on behalf of the assessee submits that in assessment proceedings u/s. 144/147 of the Income Tax Act,1961(hereinafter referred to as 'the Act') addition was made on account of unexplained cash deposits of Rs.28,50,000/- in Punjab National Bank, Karnal. The assessee failed to respond to the notices u/s. 148 of the Act as parallel proceedings u/s. 148 r.w.s.

143(3) of the Act for same assessment year were also going on against the assessee. In the other assessment proceedings the assessee furnished cash flow chart and details explaining the source of cash deposits in the bank account. The Assessing Officer (AO) in the instant assessment proceedings vide order dated 08.11.2019 after making addition of Rs.28,50,000/- u/s. 69A of the Act initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of particulars of income. The penalty u/s. 271(1)(c) of the Act was levied by the AO vide order dated 02.02.2022 on the ground of furnishing inaccurate particulars of income. The penalty was initiated on one limb of section 271(1)(c) of the Act, whereas, it was levied on another limb of section 271(1)(c) of the Act. Hence, the penalty is liable to be deleted on the ground of ambiguity. He further pointed that even the notice issued u/s. 274 r.w.s. 271(1)(c) of the Act dated 08.01.2019 is defective. The assessee has not struck off irrelevant contents in the notice including the irrelevant limb of section 271(1)(c) of the Act.

3. Per contra, Shri Manoj Kumar representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

4. Both sides heard. The penalty has been initiated u/s. 271(1)(c) of the Act by the AO for concealing particulars of income, i.e. depositing cash of Rs.28,50,000/- in the bank account and not disclosing the same in return of income. However, while levying penalty vide order dated 02.02.2022, the AO in penultimate paragraph of the order observed, "I am satisfied that the assessee has willfully furnished inaccurate particulars of income and thus concealed the particulars of his income". The manner in which the penalty has been levied clearly indicates ambiguity in the mind of AO with regard to charge for which penalty u/s. 271(1)(c) of the Act is to be levied. The Hon'ble Apex Court in the case of *T. Ashok Pai vs CIT, 161 Taxman 340*

has held that the expression 'concealment of income' and 'furnishing inaccurate particulars' carry different connotations. It has been repeatedly held by various High Courts that these two charges are independent and separate and the expressions cannot be used interchangeably. If penalty proceedings are initiated on one limb, penalty cannot be levied on other limb u/s. 271(1)(c) of the Act.

5. Further, the assessee has placed on record a copy of notice issued u/s. 274 r.w.s. 271 of the Act. A perusal of the same reveals that the AO in the notice has *inter alia* observed as under:

*"have concealed the particulars of your Income or \_\_\_\_\_ furnished inaccurate particulars of such income."*

6. The notice is omnibus. The said notice has been issued without specifying the limb for which penalty is to be levied u/s. 271(1)(c) of the Act. In notice both limbs of section 271(1)(c) of the Act are mentioned with **conjunction 'or'**. The AO has not struck off irrelevant matter in the notice. This makes the notice ambiguous and defective. Any proceedings arising out of such defective notice are vitiated. The Full Bench of Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh vs. DCIT reported as 125 taxmann.com 253* has held that where the notice is defective penalty is unsustainable.

7. In light of the facts of the case and the decisions discussed above, impugned order is *set aside* and appeal of the assessee is allowed.

Order pronounced in the open court on Tuesday the 20<sup>th</sup> day May, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**NV/-**

**प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI