

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN “DB” BENCH: DEHRADUN**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**[THROUGH VIRTUAL MODE]**

**ITA No.101/DDN/2024  
[Assessment Year : 2010-11]**

Mohit Batola 155, Village Miyanwala P.O.-Harrawala, Dehradun, Uttarakhand-248001 <b>PAN-AFTP3533M</b>	vs	ACIT Central Circle Dehradun, Uttarakhand
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee by</b>	Shri Verendra Kalra, CA	
<b>Revenue by</b>	Shri S.K.Chaterjee, CIT DR	
<b>Date of Hearing</b>	05.08.2025	
<b>Date of Pronouncement</b>	30.10.2025	

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal is filed by the assessee against the order dated 23.04.2024 by Ld. Commissioner of Income Tax (A)-3, Noida [“Ld.CIT(A)”] in Appeal No. CIT(A), Kanpur-4/10044/2009-10 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the penalty order dated 09.03.2021 passed u/s 271(1)(c) of the Act pertaining to assessment year 2010-11.

2. Brief facts of the case are that assessee is an individual, engaged in the business of providing land to big developers as well as purchase and sale of land/development work on land of others

and also director of various different companies. A search action was conducted u/s 132 of the Act on 14.07.2010 at the residential premises of the assessee alongwith the Surya Builders/Rajeev Kumar group. Thereafter, notice u/s 153A was issued on 03.05.2011 and duly served upon the assessee requiring him to furnish the return of income on or before 20.05.2011. No compliance was made by the assessee thus another notice u/s 153A(1)(a) was issued to the assessee on 08.07.2011. Thereafter, assessee filed his return of income on 16.08.2011, declaring total income of INR 30,12,697/-. Thereafter, notice u/s 143(2) was issued and subsequently questionnaire alongwith notice u/s 142(1) was issued. In response assessee filed written explanation. During the course of search, books of accounts in the Tally software were taken from the computer of the assessee as seized documents. These books of accounts were incomplete and not properly maintained and having discrepancies in the opening and closing balances of the cash book and outstanding balances in the balance sheet as submitted by the assessee. The AO passed assessment order u/s 153A(1)(b) r.w.s. 144 of the Act on 28.03.2013 and assessed the income of the assessee at INR 1,88,32,680/- after making addition of INR 27,66,635/-; INR 1,26,41,300/- and INR 4,12,050/- against returned income of INR 12,72,956/-. Thereafter, the impugned order of penalty u/s 271(1)(c) of the Act was passed wherein penalty of Rs.8,46,856/- was levied u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

3. Before us, the Ld. AR of the assessee submits that at the time of initiation of the proceedings u/s 271(1)(c) of the Act, notice was issued to the assessee dated 28.03.2013. Thereafter another notice was issued on 21.12.2020. Ld. AR submits that from the perusal of both the notices (reproduced below), 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. For ready-reference, both notices are reproduced as under:-

**NOTICE U/S 274 READ WITH SECTION 271 OF I.T.ACT, 1961**

Office of the  
Dy. Commissioner of Income Tax,  
Central Circle, Dehradun

202  
24

Dated: 41361

Status **INDIVIDUAL**  
PAN **AFTPB3533M**

To,  
SHRI MOHIT BATOLA, VILLAGE:  
MIYANWALA, P.O.HARRAWALA,  
DEHRADUN

Subject: Penalty proceedings under section 271(1)(c) for the  
Assessment Year 2010-2011 - regarding

Whereas in the course of proceedings before me for the above Assessment Year, it appears to me that you have concealed the particulars of your income or furnish inaccurate particulars of such income.

You are hereby requested to appear before me at 13-A, Subhash Road, Dehradun on 02.05.2013 at 11.00 A.M. and show cause why an order imposing a penalty on you should not be made under section 271 of Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through Authorised Representative, you may show cause in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c) of I.T.Act, 1961.

*Poonam Sharma*  
(POONAM SHARMA)  
DY. COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE, DEHRA DUN



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT  
COMMISSIONER OF INCOME TAX  
DCIT/ACIT CEN CIR, DDN

To, MOHIT BATOLA HARRAWALA , MIYANWALA DEHRADUN 248001, Uttarakhand India	
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PAN: AFTPB3533M	Assessment Year: 2010-11	DIN & Notice No.: ITBA/PNL/S/271(1)(c)/2020- 21/1029108669(1)	Date : 21/12/2020
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**Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961**

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year **2010-11**, it appears to me that **you have concealed the particulars of income or furnished inaccurate particulars of such income.**

You are hereby requested to appear before me either personally or through a duly authorised representative at **11:00 AM** on **28/12/2021** 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 authorised 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(1)(c)** of the Income Tax Act, 1961.

**Additional Remarks:** AS PER ASSESSMENT ORDER DATED 28.03.2013, FURNISH INACCURATE PARTICULARS OF INCOME AND CONCEALED INCOME OF RS.224,000/- OUT OF 1,49,60,000/- AND ADDITION OF RS. 25,16,635/- OUT OF RS. 27,66,635/-

SANGEET BANSAL  
DCIT/ACIT CEN CIR, DDN

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.  
AAYKAR BHAWAN, 13-A SUBHASH ROAD, DEHRADUN, Uttarakhand, 248001  
Email: DEHRADUN.DCIT.CEN.CIR@INCOMETAX.GOV.IN

DIN-Document identification No.

This document is digitally signed

Signer: SANGEET BANSAL  
Date: Monday, Dec 21, 2020 12:58 PM  
Location: DIRECTORATE OF INCOME TAX, India

4. On the other hand, Ld. CIT DR for the Revenue 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 cancelled.

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 caused to explain whether the penalty is going to be levied for furnishing inaccurate particulars of income or for concealment of income as the word 'OR' was not strike off in both the notices.

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 could be seen that AO has 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. The Hon'ble Apex

Court in case of **M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248 (SC)** 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) as 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 **CIT Vs. Manjunatha Cotton & Ginning Factory** reported in **(2013) 359 ITR 565** observed that for the levy of penalty u/s 271(1)(c) it has to be made clear as to under which limb 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, appeal of the assessee is allowed.

Order pronounced in the open Court on 30.10.2025.

**Sd/-**

**(YOGESH KUMAR U.S)**  
**JUDICIAL MEMBER**

**Sd/-**

**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

**Date:- 30.10.2025**

*\*Amit Kumar, Sr.P.S\**

Copy forwarded to:

1. Appellant
2. Respondent
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ASSISTANT REGISTRAR  
ITAT