

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.535/Ind/2018
Assessment Year 2011-12

Shri Ashraf Khan, 98 Shri Nagar Extn, Indore	Vs.	Income Tax Officer -2(2), Indore
(Appellant)		(Respondent)
PAN No.AIFPK8558E		

Revenue by	Shri B.J. Boricha, Sr.DR
Assessee by	Miss Nisha Lahoti ,CA
Date of Hearing	12.06.2019
Date of Pronouncement	14.06.2019

ORDER

PER MANISH BORAD, AM.

This appeal is filed at the instance of the assessee pertaining to Assessment Year 2011-12 and is directed against the order of Ld. Commissioner of Income Tax(Appeals)-III (in short 'CIT(A)'), Indore dated 26.04.2018 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 05.06.2014 framed by ITO-2(2), Indore.

2. The assessee has raised following grounds of appeal;

1. That the learned CIT(A) has erred in confirming penalty u/s 271(1)(c) on the income which is voluntarily offered by the appellant, before commencement of assessment proceedings, which is unjust, illegal and against the facts of the case.

2. That the learned CIT(A) has erred in confirming penalty u/s 271(1)(c), imposed by learned AO without specific charge of concealment of income or filing of inaccurate particulars of income on the appellant, which is quite unjust, illegal and against the facts of the case.

3. Appellant craves to leave, add, amend, alter or modify of any ground before final date of hearing.

3. Brief facts of the case as culled out from the records are that the assessee is an individual filed his return of income on 07.12.2011 for Assessment Year 2011-12 declaring income of Rs.2,43,750/- that has been revised on 30.03.2013 declaring income of Rs.10,51,750/-. The case was selected for scrutiny through CASS. Notice u/s 143(2) was issued on 07.09.2012 followed by issuance of notices u/s 143(2)/142(1) along with questionnaire. On the basis of AIR information Ld. A.O came to know that the assessee has sold immoveable property worth Rs.16,15,000/- along with the other co owners during the year but in the original return of income Long Term Capital Gain of

Rs.8,07,996/- was not offered to tax and it was subsequently shown in the revised return of income filed on 30.3.2013. The assessment was completed assessing income at Rs. 11,01,750/- after making addition for low house hold withdrawals at Rs.50,000/- to the income as shown in the revised return at Rs.10,51,750/-. Ld. A.O initiated the penalty proceedings u/s 271(1)(c) of the Act for concealment of income for not disclosing the Long Term Capital Gain of Rs.8,07,996/- in the original return of income. By issuing notice u/s 274 of the Act and after considering the submissions made by the assessee, levied penalty of Rs.1,66,500/- for furnishing inaccurate particulars and concealment of income. The instant appeal relates to the penalty levied u/s 271(1)(c) of the Act and against the order of Ld. A.O levying the penalty, assessee went in appeal before the Ld. CIT(A) but failed to get any relief.

4. Aggrieved assessee is now in appeal before the Tribunal challenging the legality of the penalty proceedings as well as raising grounds on merits against the penalty levied u/s 271(1)(c) of the Act.

5. Ld. Counsel for the assessee submitted that as per provisions of Section 271(1)(c) of the Act the penalty can be initiated either for concealing the particulars of income or for furnishing inaccurate particulars of income, whereas the Ld.A.O has not recorded specific charge on the assessee, as to whether penalty is to be levied for 'furnishing inaccurate particulars of income or concealing the particulars of income'. Placing reliance on the judgment of Hon'ble Jurisdictional High Court in the case of PCIT Vs Kulwant Singh Bhatia ITA No.9 of 2018 dated 9.5.2018, the Ld. Counsel for the assessee contended that the Ld.A.O has failed in comply the provisions of section 271(1)(c) of the Act by initiating the penalty proceedings with no specific charge. Reliance was also placed on Indore Tribunal decision in the case of Varad Mehta ITA No.693/Ind/16 dated 06.12.2018.

6. Per contra Departmental Representative vehemently argued supporting the orders of lower authorities.

7. We have heard rival contentions and perused the records placed before us. The issues raised by the assessee revolves around the legality and quantum of levy of penalty at Rs.1,66,500/- levied by the Ld. A.O u/s 271(1)(c) of the Act levied

by the Ld. A.O and subsequently confirmed by Ld.CIT(A).

8. Ld. Counsel for the assessee is in appeal before the Tribunal, firstly raising the legal issue pleaded that Ld. A.O has wrongly initiated the penalty proceedings by not specifying the charge for levy of penalty i.e. whether the penalty proceedings has been initiated for concealing particulars of income or for furnishing the inaccurate particulars of income. It was also pleaded by the Ld. Counsel for the assessee that though the Ld. Assessing Officer has made proper satisfaction on record in the assessment order for initiating penalty proceedings but in the notice issue u/s 274 r.w.s. 271(1)(c) of the Act, Ld. A.O remained silent by not specifying as for which charge the penalty proceedings have been initiated. To examine this fact we have gone through the impugned notice issued on 31.12.2013 for initiating the penalty proceedings u/s 271(1)(c) of the Act for Assessment Year 2009-10 and for reference the same is reproduce below:-

OFFICE OF THE INCOME TAX OFFICER-2(2), INDORE

Aayakar Bhawan Annex, Room No. L08, Opp. White Church, Indore

I.T.N.S.29

NOTICE UNDER SECTION 271(1)(c) READ WITH SECTION 274 OF INCOME TAX ACT, 1961

PAN AIFPK8558E

Date 31.12.2013

To,

Shri Ashraf Khan,
98, Shree Nagar Extn
Indore(M.P)

Sir/Madam,

Whereas in the course of proceedings before me for the Assessment Year 2011-12, it appears to me that you: -

X *have without reasonable cause failed to furnish the return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian 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 in the manner required by the said section 139(1) or by such notice.

X *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 06/12/2006 (order sheet entry).

V **have concealed the particulars of your income or , furnished inaccurate particulars of such income.

You are hereby requested to appear before me at **11.00 A. M. on 16.01.2014** 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 be will be considered before any such order is made under section 271.

Sd/-

(Diwker Tiwari)

Income tax Officer-2(2), Indore

9. From perusal of the above show cause notices we find that the Ld.A.O has merely mentioned the section but the specific charge i.e. whether the penalty have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income has not been mentioned. Now whether such type of notice which does not speak about the specific charge leveled against the assessee is valid and tenable in the eyes of law needs to be examined.

10. We find that similar legal issue came up for adjudication before us in the case of Varad Mehta ITA No.693/Ind/16 dated 06.12.2018 (*supra*) wherein we decided the issue in favour of the assessee, relying on the judgment in case of Kulwant Singh Bhatia (*supra*) observing as follows;

“11. We have heard rival contentions and perused the records placed before us. The issues raised by the assessee revolves around the levy of penalty at Rs.16,00,000/- levied by the Ld. A.O and confirmed by Ld.CIT(A) on the addition of Rs.51,00,000/- from undisclosed sources for purchase of immovable properties. Perusal of records shows that the assessee remaining negligent and non compliant to various opportunities provided by the Ld. A.O as well as Ld.CIT(A) during the course of penalty proceedings as well as appellate proceedings towards the levy of penalty.

12. Now the assessee is in appeal before the Tribunal, firstly raising the legal issue pleading that Ld. A.O has wrongly initiated the penalty

proceedings by not specifying the charge for levy of penalty i.e. whether the penalty proceedings has been initiated for concealing of particulars of income or for furnishing the inaccurate particulars of income. It was also pleaded by the Ld. Counsel for the assessee that though the Ld. Assessing Officer has made proper satisfaction on record in the assessment order for initiating penalty proceedings but in the notice issue u/s 274 r.w.s. 271(1)(c) of the Act, but Ld. A.O remained silent by not specifying as to which charge the penalty proceedings have been initiated. To examine this fact we have gone through the impugned notice issued for initiating the penalty proceedings u/s 271(1)(c) of the Act which is placed at Page-52 of the Paper book and the relevant extract is reproduced below:

To

Shri Varad Mehta

239, Sunny Palace M P Nagar Zone-1,

Bhopal

Sir / Madam,

Sub:- Penalty proceeding u/s .. 271(1) (c) ..

of the Income Tax Act 1961 for the AY 2008.09

In connection with the penalty proceedings u/s, 271(1) (c) for the assessment year(s) 2008-09 you are requested to attend my office on 18.01. 2010 at 11.00 AM to show cause why penalty should not be imposed. However. if you do not wish to be heard in person in this regard, you may submit your written submissions so as to reach me by the above date which will be considered before disposal of the matter.

Sd/-

(Shrikant Namdeo)

Deputy GommissfsonerOfIncome Tax-1(1), Bhopal

Bhopal

13. From perusal of the above show cause notice we find that the Ld.A.O has merely mentioned the section but the specific charge i.e.

whether the penalty have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income has not been mentioned. Now whether such type of notice which does not speak about the specific charge leveled against the assessee is valid and tenable in the eyes of law needs to be examined.

14. We find that similar issue came up before the jurisdictional High Court in the case of Shri Kulwant Singh Bhatia (*supra*) wherein the Hon'ble Court discussed the judgment of Hon'ble High Court in the case of CIT V/s Manjunatha Cotton Ginning Factory (*supra*) and CIT V/s SSA's Emerald Meadows (*supra*) held that *"on due consideration of the arguments of the Ld. counsel for the appellant, so also considering the fact that the ground mentioned in show cause notice would not specify the requirement of law, as notice was not specific, we are of the view that Ld. Tribunal has rightly allowed the appeal of the assessee and set aside the order of penalty enforced by the authority"*.

15. Similarly in the case of CIT V/s Manjunatha Ginning Factory, Hon'ble High Court of Karnataka held that *"the notice issued u/s 274 r.w.s. 271(1)(c) of the Act should specifically mention the ground in section 271(1)(c) whether concealment of income or for furnishing in accurate particulars of income. Sending printed form where all ground of section 271(1)(c) would not mentioned the specific requirement of law. Assessee should know the grounds on which he has charged specific otherwise opportunities of natural justice denied. On the basis of such proceedings no penalty could be imposed to the assessee. Taking up the penalty proceedings on one limb and finding the assessee in another limb is bad in law"*. Though in the instant appeal the Ld. A.O has made proper satisfaction in the body of the assessment order but in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act he failed to mention the limbs for which penalty proceedings have been initiated. It is the negligence of the Ld. A.O in not making proper specific charge in the notice u/s 274 about the addition for which penalty proceedings have been initiated. Ld. A.O

should be clear as to whether the alleged addition goes under the limb of “concealment of particulars of income” or “furnishing inaccurate particulars of income”. Merely issuing notice in general proforma will negate the very purpose of natural justice as held by the Hon'ble Apex Court in the case of Dilip N Shraf 161 Taxmann 218 that “the quasi-criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice.

14. We therefore respectfully following above referred judgments and in the given facts and circumstances of the case are of the considered view that the alleged notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 31.12.10 is invalid, untenable and suffers from the infirmity of non application of mind by the Assessing Officer. We accordingly direct to delete the penalty of Rs.16,00,000/- imposed u/s 271(1)(c) on this ground itself. We accordingly allow the additional ground raised by the assessee on the legality of the penalty proceedings initiated u/s 271(1)(c) of the Act. Since the penalty u/s 271(1)(c) also has been dealt on the preliminary points other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are rendered academic in nature and the appeal of the assessee for the Assessment Year 2008-09 is allowed”.

11. We therefore respectfully following above referred judgments and in the given facts and circumstances of the case are of the considered view that the alleged notice issued u/s 271(1)(c) of the Act dated 31.12.2013 is invalid, untenable and suffers from the infirmity of non application of mind by the Assessing Officer. Since we have held the notice u/s 274 of the Act as invalid, the

subsequent proceeding u/s 271(1)(c) of the Act is thus held *void ab initio*. Accordingly legal ground No.2 raised by the assessee on the legality of the penalty proceedings is allowed. Accordingly Ground No.2 of the assessee is allowed.

12. Though we have already quashed the penalty proceedings by holding the issuance of notices u/s 274 as invalid and not tenable and suffering from infirmity of application of mind by Ld. A.O but still for academic purposes we will like to adjudicate Ground No.1 challenging the quantum of penalty levied on the assessee.

13. We have heard rival contentions and perused the records placed before us. We find that the assessee filed his original return on 7.12.2011 for income of Rs.2,43,750/-. Case selected for scrutiny through CASS by issuance of notices u/s 143(2) of the Act on 07.09.2012 fixing the date of hearing on 27.09.2012. On 30.03.2013 the assessee revised the return of income after disclosing the Long Term Capital Gain of Rs.8,07,996/-. The time limit for furnishing the return of income as per Section 139(5) of the Act for the Assessment Year 2011-12 was one year from the end of the assessment year or the date of completion of the assessment, whichever occurs earlier. So as on 31.3.2013 one year from the

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end of Assessment Year 2011-12 did not expired and assessment u/s 143(3) of the Act was still in the process of completion. Therefore the assessee was legally entitled to file the revised return of income. The assessment proceedings u/s 143(3) of the Act were completed on 31.12.2013 and the Ld. A.O has duly considered the revised return. In these given facts and circumstances of the case holding the assessee liable for paying penalty u/s 271(1)(c) of the Act on the income duly disclosed in the revised return of income before the completion of the assessment proceedings, is not justified and the same deserves to be deleted. We accordingly allow Ground No.1 of the assessee.

14. In the result Ground No.1 & 2 of the assessee are allowed.

The order pronounced in the open Court on 14.06.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 14 June, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

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