

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 176/JP/2018

निर्धारण वर्ष / Assessment Year :2010-11

Shri Ratan Kumar Sharma, R-35, Raj Agan NRI Colony, Pratap Nagar, Sanganer, Jaipur.	बनाम Vs.	I.T.O., Ward 7(1). Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AFMPS 7380 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R Sharma (CA)

राजस्व की ओर से / Revenue by : Shr Rajendra Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/02/2019

उदघोषणा की तारीख / Date of Pronouncement : 08/03/2019

आदेश ORDER

PER: R.C. SHARMA, A.M

This is an appeal filed by the assessee against the order of Id.CIT(A)-3, Jaipur dated 07/12/2017 for the A.Y. 2010-11 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short the Act).

2. The only grievance of the assessee relates to levy of penalty at Rs. 18,99,042/- U/s 271(1)(c) of the Act without specifying in which limb of Section 271(1)(c) of the Act the penalty proceedings has been initiated as to whether it was for concealment of income or for furnishing inaccurate particulars of income.

3. Rival contentions have been heard and record perused. The facts in brief are that the assessee is a Doctor and was a proprietor of Sharma X-Ray and Clinic Jaipur. Besides the above activity he is deriving income from pension and other sources. A search u/s 132 of the I.T. Act, 1961 took place at the residence and clinic of assessee on 17-2-2011. The assessee at that time was 80 years old and during the search period his wife aged about 77 years was only at residence, with the assessee. The assessee has one son Shri Dinesh Sharma and three daughters. His son and two daughters alongwith theirs respective families are permanently residing in USA while one daughter along with her family living in Jaipur separately to the assessee. In course of search petty cash, small quantity of jewellery and some loose papers and diaries etc. were found. Statement(s) of the assessee Shri Ratan Kumar Sharma was recorded and his said statement(s) he admitted and surrendered additional income in his hands in the hands of his wife Smt. Maya Sharma, in the hands of his son Dinesh Sharma and grand daughter Neha Sharma. The Ld. A.O. issued notice u/s 153A in case of assessee. The assessee filed his return of income in response to said notice issued u/s 153A declaring an income of Rs. 1,59,92,770/-. The Ld. A.O. completed assessment u/s 153A/143 (3) at an income of Rs. 3,52,99,670/- after making an addition of Rs. 1,74,01,200/- on account of long term capital gain on sale of immovable

property(s) and Rs. 19,05,700/- under some other heads. In appeal CIT (A) reduced the amount of LTCG of Rs. 1,74,01,200/- to Rs. 94,95,211/- but sustained other additions made by Ld. A.O. In further appeal before Hon'ble ITAT other additions Rs.19,05,700/- were deleted by the Hon'ble Bench. Thus finally leaving an addition on account of LTCG amounting to Rs. 94,95,211/- to the returned income. The A.O. also levied penalty for the addition so upholding U/s 271(1)(c) amounting to Rs. 18,99,042/-, which was confirmed by the Id. CIT(A) against which the assessee is in further appeal before us.

4. The Id AR Mr. S.R. Sharma, C.A. appeared on behalf of the assessee and submitted that the penalty is bad in law as notice issued u/s 271 (1) (c) of the Act is improper and invalid. Our attention was drawn to the assessment order the A.O. held in para 8.3 of the order that "penalty proceedings u/s 271(1)(c) of the Act is initiated for furnishing the inaccurate particulars of income and concealment of income and at the bottom of the assessment order" issue penalty notice u/s 271 (1) (c) of the Act for concealment of income / inaccurate particulars of income." In the assessment order thus there is no satisfaction that whether the penalty is initiated for concealment of income or furnishing of inaccurate particulars of income.

5. Our attention was also invited to the notice issued U/s 274 read with Section 271 of the Act wherein it was stated that the penalty is imposable as the assessee had concealed particulars of income or furnished inaccurate particulars of income.

6. In view of the above, it was submitted that notice issued under section 274, read with Section 271 (1) (c) of the Income Tax Act, 1961, should specify under 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. In the absence of which no penalty should be levied on the assessee as determination of such limb is sine qua non for imposition of penalty under section 271 (1) (c). the Id AR emphasized the fact that neither in the assessment order nor in the penalty notice, the A.O. has clearly mentioned the limb, on which basis the impugned penalty has been imposed. As verifiable from the record that the Ld. AO has simply issued a pre-printed notice without striking off the unnecessary portions of the notice. If the A.O. was of the view that the assessee has concealed the income or furnishing inaccurate particulars of income then he should have deleted or not mentioned the other limb for imposition of penalty i.e. concealing the particulars of income. The above act of the A.O. clearly

shows that the entire exercise of initiation of penalty proceedings has been done without application of mind.

7. Our attention was also invited to the penalty order passed on 30.03.2016 by the A.O., wherein the penalty u/s 271(1)(c) is imposed on addition of income of Rs. 1,46,37,002/- on account of LTCG by holding that the assessee had furnished inaccurate particulars of income and concealed his income. The relevant findings of A.O. in last para on page 4 of the penalty order is as under: -

"On the basis of above discussion, I hold that the assessee had furnished inaccurate particulars of income and concealed his income of Rs. 1,46,37,002/- as sold immovable property is hereby treated as Long Term Capital Gain in the hands of the assessee. Hence, it is a fit case for imposing the penalty u/s 271 (1) (c) of I. T. Act, 1961. I therefore imposed penalty of Rs. 33,00,000/- u/s 271 (1) (c) of I. T. Act, 1961."

In view of the above facts and submissions duly supported and verifiable from the assessment order, penalty notice(s) and also from penalty order it was argued by the Id. AR that the penalty proceedings have been initiated without specifying the limb for reasons in the penalty notice to impose the penalty i.e. whether the penalty was initiated for concealment of particulars of income or for furnishing inaccurate particulars of income. Thereafter the penalty levied by holding that the assessee has furnished inaccurate particulars of income and concealed the income to the extent of

Rs. 1,46,37,002/-. Therefore, the initiation and imposing of penalty proceedings is wrong, bad in law, invalid and void ab initio. For the reasons that now there is a settled law position on the issue that the notice u/s 271 should be specific on imposing of penalty u/s 271 (1) (c) of Income Tax Act, 1961 i.e. concealed particulars of income or furnishing inaccurate particulars of income. For this proposition, reliance was placed on the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. M/s SSA's EMERALD MEADOWS reported in 2015 (11) TMI 1620 - , wherein Hon'ble Court has held that: -

"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 decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX - VS - MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

In our view, since the matter is covered by judgement of the Division Bench of this Court, we are of the opinion, no substantial question of law arised in this appeal for determination by this Court. The appeal is accordingly dismissed."

The department has filed SLP in Hon'ble Supreme Court which has been dismissed. Therefore, Hon'ble

Supreme Court has approved the findings made by Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows And CIT Vs Manjunatha Cotton & Ginning Factory & others [2013] 359 ITR 565.

8. Further reliance was placed on the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Karnataka) after referring to the decision of Hon'ble Supreme Court in the case of T. Ashok Pai (Supra) held as under: -

"..... Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in 292 ITR 11 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of MANU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 171 taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The Standard proforma without striking of the relevant clauses will lead to an inference as to non application of mind....?"

9. Further reliance was placed on the decision of the Hon'ble Gujarat High Court in the case of M/s. Jyoti Ltd. [2013] taxmann.com 65 (High Court-Guj), the assessing officer in his penalty order noted as under: - "In view of the above facts, it is clear that the assessee concealed income/furnished inaccurate particulars of income. I, therefore, consider it a fit case for levy of penalty u/s 271 (1) (c)" Hon'ble Gujarat High Court in the above case held that, where the Assessing officer in order of penalty did not come to a clear finding regarding the penalty being imposed on concealment of income or on furnishing inaccurate particulars of income, the Tribunal was justified in setting aside the impugned penalty order. Hon'ble Gujrat High Court followed the ratio laid down in the case of New Sorathia Engg. Co. [2006] 282 ITR 642 (Guj-High Court).

5 (ii) The above ratio laid down in the case of Manjunatha Cotton & Ginning Factory Supra) has been followed by various High Courts in the below mentioned cases:

(a) Shri Samson Perinchery. ITA 1154, 953, 1097, 1226 of 2014 (Order date – 5.01.2017) (Bombay High Court)

(b) SSA's Emerald Meadows [2016] 73 taxmann.com 241 (Karnataka High Court)

(c) Mitsu Industries Ltd. ITA No. 216 of 2004, Gujarat High Court .

10. Reliance was also placed on the decision of the Hon'ble Jurisdictional High Court of Rajasthan in the case of Shevata Construction Co. Pvt. Ltd. ITA No. 534/2008, wherein the Hon'ble High Court at Para 9 of its order held as under: -

"..... Taking into consideration the decision of the Andhra Pradesh High Court which virtually considered the subsequent law and the law which was prevailing on the date the decision was rendered on 27.08.2012. In view of the observation made in the said judgement, we are of the opinion that the contention raised by the appellant is required to be accepted and in the finding of Assessing officer in the assessment order it is held that the A.O. has to give a notice as to whether he proposes to levy penalty for concealment of income or furnishing inaccurate particulars. He cannot have both the conditions and if it is so he has to say so in the notice and record a finding in the penalty order"

11. Further more, reliance was placed on the decision of the Hon'ble Karnataka High Court in the case of Muninga Reddy Vs. ACIT (2017) 396 ITR 398 and the Telengana & Andhra Pradesh High Court in PCIT Vs. Baisetty Revethi (2017) 398 ITR 88 held the same view.

In the above said judgments the Hon'ble courts decided the law position on the issue that the concealment of income and furnishing inaccurate particulars of income, two are different defaults and they cannot be intermixed. Therefore, the order of Ld. CIT (A) holding that it cannot be concluded that penalty notice did not specify the limb for initiation of penalty proceedings i.e. for concealment of income or for furnishing inaccurate particulars of income that itself cannot be reason

for invalidating penalty proceedings is wrong and order of CIT (A) deserves to be set aside on this issue and penalty levied by AO deserves to be cancelled.

12. Further reliance was placed on the decision of ITAT, Jaipur Bench in the case of Narayana Heights & Towers, Vs. I.T.O. Ward – 2- 4 Jaipur ITA No. 1033/JP/2016 has canceled the penalty by holding that: -

"3.2 We have heard the rival contention, perused the material available on record and gone through the orders of the authorities below. For the sake of clarity the relevant contents of the Assessment order are reproduced as under: -"

"Penalty u/s 271 (1) (c) is separately as assessee has concealed the income "

Relevant contents of the Penalty Order are reproduced as under: -

"As the assessee had not filed any appeal against order of the A.O. and it appears that the assessee is satisfied with the order passed by the A.O.. Therefore, it appears that the assessee has nothing to say and has no objection regarding imposing the penalty us/ 271 (1) (c) of I. T. Act, 1961.

Therefore, I impose a penalty of equal to 100% of tax sought to be evaded on account of the above acts of the assessee of Rs. 34,05,436/- i.e. 100% tax evaded.

In the light of the above, we need to examine whether assessment order and the penalty order comply with the provisions of section 271 (1) (c) of the Act. We find that on page 3 of the assessment order, the assessing officer, A.O. observed as under: -

"As the assessee has concealed/furnished the inaccurate particulars of income therefore, penalty u/s 271 (1) (c) is also initiated."

3.3 As per section 271 (1) (c), the assessing officer is empowered to impose penalty if in the course of any proceedings under this Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. From the above provision it is clear that there has to be a specific satisfaction by the Assessing officer that the assessee is guilty of concealing the particulars of his income or furnishing inaccurate particulars of such incomes.

3.4 From the above, it is clear that the assessing officer should give a specific finding. In the present case, in the assessment order as noted above the assessing officer has stated that the assessee has concealed / furnished the inaccurate particulars of income. Therefore, the penalty under Section 271 (1) (c) was also initiated from this it cannot be inferred whether there is specific charge of concealing the particulars of income or furnished the inaccurate particulars of such income Law is well settled that the assessing officer has to come to a definite satisfaction whether the assessee has concealed the income of particulars or furnished the inaccurate particulars of income. The Hon'ble Karnataka High Court in the case of CIT and Another Vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Kar.) has held that the notice u/s 274 of the Act should specifically state as to whether penalty is being proposed for concealment of particulars of income or inaccurate particulars of income. In the present case notice under section 274 dated 25/3/2015 enclosed at paper book page 16 reads as under: -

"Penalty Notice Under Section 274. Read with Section 271 of the IT Act, 1961.

Whereas in the course of proceedings before me for the Assessment Year 2012-13. It appears to me that you have: -

Read With Section

271 (1) (c) concealed particulars of income or furnished inaccurate particulars of income."

Therefore, there is no specific charge by the Assessing officer. Further, it is noted that the Assessing officer in penalty order (as noted hereinabove) has proceeded on the basis of the assumption that the assessee is satisfied with the assessment order. Therefore, it appears that the assessee has nothing to say and has no objection regarding the imposing of the penalty under section 271 (1) (c) of the Act. In our considered view, the assessing officer was not justified in imposing the penalty on this basis the action of the assessing officer is contrary to the provision of law."

13. The Id AR of the assessee also placed reliance on the decision of Jaipur Bench of the ITAT in the case of Lal Chand Mittal Vs. DCIT (ITA No. 772/JP/2016 order dated 29-12-2011 and various other cases decided by it held that on the basis of such notice issued by sending printed where only all the ground of section 271 (1) (c) are mentioned or where show cause notice u/s 271 (1) (c) for imposing of penalty without specifying the limb for reasons to impose penalty whether for concealment of income or furnish inaccurate particulars of income is not as per law and assessing officer did not have any jurisdiction to impose penalty u/s 271 (1) (c). In

the case(s) Radha Mohan Maheshwari Vs. DCIT (ITA No. 773/JP/2013) Mohd. Sharif Khan Vs. DCIT (ITA No. 441/JP/2014) Shankar Lal Khandelwal Vs. DCIT (ITA No. 878/JP/2013) Murari Lal Mittal (ITA No. 334/JP/2015 order dated 9-11-2016 and Mridula Agarwal (ITA No. 176/JP/2016) the Hon'ble Bench upheld the same view.

14. Even on merits also, it was contended by the Id AR that no penalty is warranted in so far as the assessee in return filed u/s 153A declared capital gain on the basis of consideration received as specified in registered sale deed. In course of search no material or evidence or incriminating material was found which could establish that assessee received any amount as on-money over and above the consideration specified in registered sale deed. The A.O. taking into consideration the statement recorded in course of search from grand father of the assessee and from a seized paper having rough notings of some sale of plots in the previous year relevant to A.Y. 2007-08 by other family members held that on-money was received for assessee in sale of plots by assessee in this year also. The A.O. applied said basis and accordingly estimated the sale value of plot(s) of land sold by assessee in this year and made addition in LTCG. Thus there was no cogent basis nor any concrete evidence or material for determining higher capital gain than what declared by

assessee and higher capital gain was determined only by estimate as is evident from para 7.7 of assessment order.

15. As per Id AR, no penalty is imposable for making addition by estimating higher capital gains on the property so sold by the assessee.

16. On the other hand, the Id DR has contended that the Assessing Officer has properly recorded satisfaction for initiation of penalty. For the defect in notice, reliance was placed by the Id DR on the decision of the ITAT Mumbai benches in the case of Shri Mahesh M. Gandhi Vs ACIT in ITA No. 2976/Mum/2016 dated 27/02/2017 and on the decision of the Hon'ble Supreme Court in the case of Mak Data Vs CIT (2013) 358 ITR 593 (SC). As per the Id DR the mere fact that the penalty notice does not specify the limb for initiation of penalty proceedings i.e. for concealment of income or for furnishing of inaccurate particulars of income that itself cannot be a reason for invalidating the penalty proceedings, if the reasons for initiating the penalty are discernible from the assessment order.

17. We have considered the rival contentions and carefully gone through the orders of the authorities below. The facts and circumstances vis a vis and the arguments of the Id AR as well as the Id DR are same as discussed by us in ITA No. 781/JP/2017. The précised observation and finding of the Bench is reproduced as under:

- “15. We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the Id. AR and Id. DR during the course of hearing before us in the context of factual matrix of the case. We had also perused the notice issued U/s 274 read with Section 271 of the Act dated 23/3/2016 as placed on the record. It is clear from the notice so issued that the Assessing Officer had levied charge of concealed the particulars of income or furnished inaccurate particulars of such income. In view of the judicial pronouncements discussed hereinbelow, the notice issued under section 274, read with Section 271 (1) (c) of the Income Tax Act, 1961, should specify under 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. In the absence of which no penalty should be levied on the assessee as determination of such limb is sine qua non for imposition of penalty under section 271 (1) (c) of the Act.
16. There can be no doubt that penalty u/s. 271(1)(c) of the Act is levied for concealing particulars of income or for furnishing inaccurate particulars of such Income, which are the two limbs of this provision. In other words, it is only when the authority invested with the requisite power is satisfied that either of the two events existed in a particular case that proceedings u/s. 271(1)(c) of the Act are initiated. This pre-requisite should invariably be evident from the notice issued u/s. 274 r.w.s. 271 of the Act, which is the jurisdictional notice, for visiting an assessee with the penal provision. The intent and purpose of this notice is to inform the assessee as to the specific charge for which he has been show caused so that he could furnish his reply without any confusion and to the point. In the present case, neither the assessee nor anyone else could make out as to whether

the notice u/s. 274 r.w.S. 271 of the Act was issued for concealing the particulars of income or for furnishing inaccurate particulars of such income disabling it to meet with the case of the Assessing Officer. There are a catena of judgments highlighting the necessity for identifying the charge for which the assessee is being visited and in all those decisions, Hon'ble Courts have repeatedly held that where the jurisdictional notice is vague, similar to the one in the present case, the consequent levy cannot be sustained.

17. *In this connection, reliance is first placed upon the judgment of the Hon'ble Karnataka High Court In the case of CIT v. Manjunatha Cotton and Ginning Factory & Ors. and Veerabhadrappa Sangappa and Co. (359 ITR 565, 577, 601, 603-604) in which the facts are similar. In those bunch of tax appeals, several assessee and several issues were involved. In so far as I.T.A. No. 5020 of 2009 was concerned, one of the substantial questions on which the appeal was filed by the revenue was:*

"Whether the notice issued under section 271(1)(c) in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is valid and legal?"

18. *While answering the above in favour of the assessee, the following findings were recorded by the Hon'ble Court:*

"61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment furnishing inaccurate particulars of income are different. Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case

of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai reported in [2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering Works reported in [1980] 122 ITR 306 (GUJ) and the Delhi High Court in the case of CIT v. Virgo Marketing P Ltd reported in [2008] 171 Taxman 156 has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. "(p) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.

19. **Thereafter, in so far as the manner in which the statutory notice was required to be issued, the Hon'ble Court concluded thus:**

(p) Notice u/s 274 of the Act should be specifically state the grounds mentioned in section 271(1)(c), i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income.

20. **Finally, in concurring with the findings recorded in the order of the Tribunal, it was held thus:**

66. In view of the aforesaid law, we are of the view that the Tribunal was justified in holding that the entire proceedings are vitiated as the notice issued is not in accordance with law and

accordingly justified in interfering with the order passed by the appellate authority as well as the assessing authority and in setting aside the same. Hence, we answer the substantial questions of law framed in this case in favour of the assessee and against the Revenue."

21. *The aforesaid judgment was unsuccessfully challenged by the revenue before the Supreme Court, as it was rejected vide Petition for Special Leave to Appeal (C) No. 13898/2014 dated 11.07 2016. Reliance was next placed upon another judgment of the Hon'ble Karnataka High Court in the case CIT v. SSA'S Emerald Meadows (Income Tax Appeal No. 380 of 2015 decided on 23.11.2016). In this case also a similar situation arose in as much as the Hon'ble Court was required to adjudicate on the following substantial question:*

(1) Whether, omission of 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?"

22. *The aforesaid question was dealt with by the Hon'ble Court in favour of the assessee in the following words:*

"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 decision of the Division Bench of this Court rendered in the case of Commissioner of 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."

23. The SLP filed by the department in the aforesaid case also was dismissed by the Hon'ble Supreme Court vide Petition for Special Leave to Appeal (C) No /2016 (CC No. 11485/2016) dated 05.08.2016.
24. The Hon'ble Bombay High Court in the case of CIT v. Shri Samson Perinchery [Income Tax Appeal No. 1154 of 2014 and others dated 05.01.2017] had also occasion to consider a similar issue. In this case, though proceedings u/s. 271(1)(c) of the Act were initiated for furnishing of inaccurate particulars of income, in the notice issued u/s. 274 r.w.s. 271 of the Act in the standard form, the charge for which it was issued was not identified, as in the present case. In deleting the levy, so far as non-specification of the default in the jurisdictional notice, the following findings were recorded by the Hon'ble Bombay High Court:

"7 Therefore, the issue herein stands concluded in favour of the Respondent-Assessee by the decision of the Karnataka High Court in the case of Manjunath Cotton and Ginning Factory (supra). Nothing has been shown to us in the present facts which would warrant our taking a view different from the Karnataka High Court in the case of Menjuneth Cotton and Ginning Factory (supra).

8. In view of the above, the question as framed do not give rise to any substantial question of law Thus, not entertained"

25. The Hon'ble Supreme Court in *Dilip N. Shroff v/s JCIT*, [2007] 291 ITR 519 (SC), has observed that while issuing the notice under section 274 r/w section 271, in the standard format, the Assessing Officer should delete the inappropriate words or paragraphs, otherwise, it may indicate that the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or had furnished inaccurate particulars of income. This, according to the Hon'ble Supreme Court, deprives the assessee of a fair opportunity to explain its stand, thereby, violates the principles of natural justice. As held by the Hon'ble Supreme Court in *CIT v/s Reliance Petroproducts Pvt. Ltd.* [2010] 322 ITR 158 (SC), the aforesaid principle laid in *Dilip N. Shroff (supra)* still holds good in spite of the decision of the Hon'ble Supreme Court in *UOI v/s Dharmendra Textile Processors* (2008) 306 ITR 277 (SC). The Hon'ble Jurisdictional High Court in *CIT v/s Smt. Kaushalya & Ors.*, [1995] 216 ITR 660 (Bom), observed that notice issued under section 274 must reveal application of mind by the Assessing Officer and the assessee must be made aware of the exact charge on which he had to file his explanation. The Court observed, vagueness and ambiguity in the notice deprives the assessee of reasonable opportunity as he is unaware of the exact charge he has to face. The Hon'ble Jurisdictional High Court in *Samson Perinchery (supra)*, following the decision of Hon'ble Karnataka High Court in *CIT v/s Manjunatha Cotton & Ginning Factory*, [2013] 359 ITR 565 (Kar.), held, order imposing penalty has to be made only on the ground on which the penalty proceedings has been initiated.
26. The Hon'ble Jurisdictional High Court in the case of *Shevata Construction Co. Pvt. Ltd. (supra)* has in para 9 as under:

“..... Taking into consideration the decision of the Andhra Pradesh High Court which virtually considered the subsequent law and the law which was prevailing on the date the decision was rendered on 27.08.2012. In view of the observation made in the said judgement, we are of the opinion that the contention raised by the appellant is required to be accepted and in the finding of Assessing officer in the assessment order it is held that the A.O. has to give a notice as to whether he proposes to levy penalty for concealment of income or furnishing inaccurate particulars. He cannot have both the conditions and if it is so he has to say so in the notice and record a finding in the penalty order”

27. *Applying the proposition of law laid down by the various Hon'ble High Courts including the Hon'ble Jurisdictional High Court, we do not find any merit for the penalty so imposed, accordingly, AO is directed to delete the penalty so imposed u/s. 271(1)(c) of Act.*

18. Following the reasoning given therein, we do not find any merit for the penalty so imposed, accordingly, AO is directed to delete the penalty so imposed u/s. 271(1)(c) of Act.

19. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 08th March, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08th March, 2019

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ratan Kumar Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 7(1), Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 176/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar

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