

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“E” BENCH, MUMBAI**

**BEFORE HON’BLE SHRI R. C. SHARMA, AM &**  
**HON’BLE SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No.206/Mum/2011  
(निर्धारणवर्ष / Assessment Year: 2006-07)

M/s Tanna Financial Services Pvt. Ltd. Office No. 5, 36 Hamam Street, Fort, Mumbai-400 039	<b>बनाम/ Vs</b>	ACIT Cir. 4(2) 6 <sup>th</sup> floor, Aayakar Bhavan, M. k. Road, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AABCC5330R
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Vishnu Agrawal
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Ashish Kumar
सुनवाईकीतारीख/ Date of Hearing	:	25/07/2018
घोषणाकीतारीख / Date of Pronouncement	:	06/08/2018

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax-8, Mumbai for AY 2006-07 on the grounds of appeal mentioned herein below:-

*1. On the circumstances and facts of the case, the learned Commissioner of Income-tax (Appeals) has erred in levying a penalty u/s 271(1)(c) of the I.T. Act, 1961 for a sum of Rs. 8,41,500/- without considering the facts that the appellant has voluntarily offered the amount of Rs. 25,00,000/- as additional income during the course of assessment proceeding only.*

*2. The Appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the appeal.*

2. The brief facts of the case are that the assessee company has filed its return of income for the year under consideration on 30.06.06 declaring a total income of Rs. 20,31,730/-. Thereafter the case was selected for scrutiny and after serving statutory notices and seeking reply, order of assessment u/s 143(3) was passed by AO thereby making addition of Rs. 25,00,000/- on account of bogus share capital and levied penalty of Rs. 8,41,500 u/s 271(1)(c) of the Act.

3. Aggrieved by the order of the AO, assessee filed appeal before Ld. CIT(A) and the Ld. CIT(A) after considering the case

of both the parties dismissed the appeal filed by the assessee and confirmed the order of levy of penalty.

4. Aggrieved by the order of Ld. CIT(A), assessee filed the present appeal before us on the grounds mentioned herein above.

5. The solitary ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the penalty u/s 271(1)(c) of the I.T. Act.

6. In addition to the ground challenging imposition of penalty, the assessee has also raised legal ground with regard to the notice issued u/s 274 and stated that the show-cause notice for penalty did not specify the ground on which penalty is initiated.

7. Learned AR submitted that as the notice u/s. 274 does not specify the charge against the assessee the same is invalid and thereby the penalty order is liable to be quashed as without jurisdiction. In support the assessee seeks to rely on judgment of Hon'ble Karnataka High Court in case of Manjunatha 359 ITR 565 (Kar) and the assessee specifically seeks to draw attention to

pages 600 to 603 of the said judgment. The said judgment has been followed in various subsequent judgments and the assessee has enclosed copy of the same in paper book no 2 filed. In case of SSA Emerald before the Hon'ble Karnataka High Court, question of law 3 read as follows:

*"(3) Whether on 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 Assessing Officer was specified that the Assessee has concealed particulars of income?"*

8. As per learned AR, in the case of Baisetty Revathi before the Hon'ble Andhra Pradesh High Court, the department had relied on judgment of Hon'ble Supreme Court in case of K P Madhusudhan, 251 ITR 99 and the same was distinguished and penalty was deleted following ratio laid down in case of Manjunatha. Copy of the judgment is at page 46 to 56 of the paper book and relevant part is at page 54. It reads as follows:

*"Smt. Kiranmayee, learned counsel, placed reliance on the judgment of the Supreme Court in K.P. MADHUSUDHAN'AN V/s. COMMISSIONER OF INCOME TAX, COCHIN . Therein, <sup>2</sup> the Supreme Court*

*held that it is not necessary for the Assessing Officer, while issuing a notice under Section 271(1)(c), to expressly invoke Explanation 1(B) appended to the provision. It is however relevant to note that Explanation 1(3) merely adverts to a case of failure of an assessee to substantiate the explanation offered whereby the amount added or disallowed while computing the total income of such person for the purposes of the penalty provision shall be deemed to represent the income in respect of which particulars had been concealed. The Supreme Court observed that the statutory provision included the Explanation and once the assessee was put on notice, no express invocation of the Explanation is necessary.*

*This judgment has no application to the case on hand as what we are concerned with presently is whether the assessee is required to be put on notice as to whether she is to be penalized for concealment of particulars of income or for furnishing inaccurate particulars of income. These are two different acts. Concealment of income is an act of omission while furnishing of inaccurate particulars of income is an act of commission. The consequences of such acts, being penal in nature, an assessee has to be informed as to what exactly is the charge against him so that he may respond thereto."*

9. In case of Mrs Indrani Pillai before the Hon'ble Mumbai Bench of the Income Tax Appellate Tribunal, the judgment of Hon'ble Bombay High Court in case of Maharaj Garage was relied on by the department and the same was distinguished. The copy of the judgment is at page 57-70 of the paper book and the relevant part is at page 68. It reads as follows:

*"The ratio laid down in the aforesaid decision squarely applies • to the facts of the present case. As far as the judgment of the Hon'ble Jurisdictional High Court in Maharaj'Garage (supra) relied upon by the learned Departmental Representative, on a careful reading of the said judgment, we are of the view that it will have no application to the facts of the case. As could be seen, the basic issue arising out of the reference application which fell for consideration of the Hon'ble Jurisdictional High Court was, while granting previous approval by Inspecting Assistant Commissioner of Income-tax as per provisions of section 271(l)(c)(iii) of the Act whether the assessee was required to be given an opportunity of being heard. While considering this issue, the Hon'ble Jurisdictional High Court observed that provisions of section 271(l)(c)(iii) does not attract rule of presumption of mens rea as the penalty imposable under the said provision is for the breach of civil obligation. The observations of the Hon'ble Court against issuance of show cause notice appears to be in the context of quantum of penalty proposed to be imposed and not with reference to the doing away with the issuance of show cause notice as contemplated under section 274 of the Act. Therefore, the judgment of the Hon'ble Court cannot be read out of context or in a manner to mean that there is no need for mentioning the specific limb of section 271(l)(c) of the Act for which the penalty was intended to be imposed, as such issue never came up for consideration before the \Hon'ble High Court. That being the case, the aforesaid decision cannot be applied for rebutting the proposition that in the absence of recording of satisfaction regarding the exact nature of offence, no penalty under section 271(l)(c) can be imposed. In view of the aforesaid, we delete the penalty imposed."*

10. On the other hand learned DR relied on the order of lower authorities and contended that in respect of discrepancy so found

in the seized documents, AO has correctly levied penalty u/s.271(1)(c) of the Act.

11. Our attention was invited to notice dated 29/12/2008 issued u/s. 274 r.w.S. 271 (1)(c) wherein AO has not strike of inappropriate words. Our attention was also invited to the quantum order wherein no satisfaction was found to be recorded by the AO as to whether he wants to initiate penalty proceedings for concealment of income or furnishing inaccurate particulars of income. In the quantum order, the AO has just mentioned that penalty proceedings u/s 271(1)(c) of the Act are initiated separately. As per learned AR, there is no allegation as to whether penalty was to be levied for furnishing inaccurate particulars or for concealment of income. Reliance was placed on the decision of Hon'ble Bombay High Court in the case of Samson Perinchery and the series of the decision of the Tribunal wherein penalty was deleted on the plea that in the notice issued u/s.274 r.w.s.271 (1)(C), AO has not deleted the inappropriate words.

12. We have considered rival contentions and carefully gone through the orders of the authorities below and deliberated on the judicial pronouncements cited by lower authorities during the course of hearing before us. From the record we found that during the course of assessment proceedings itself, the assessee has agreed for addition with respect to the discrepancy pointed out by the AO.

13. For the addition so made, AO issued show-cause notice u/s.274 dated 29/12/2008 which is in the standard pre-printed form and both the limbs of concealment and inaccurate particulars have been retained. Copy of notice is placed on court file. In order levying penalty, the Assessing officer has levied penalty for both the limbs as can be seen from conclusion at page 7 of the penalty order. The learned CIT(A) has confirmed the penalty.

14. Even on the legal issue, we found that the two charges for initiating the penalty operate on two different footing and under the penal provision the charge has to be very specific and not vague. These charges are not to be reckoned as any casual

remark, which can be interchanged by the AO at any stage on his whims and fancies. It is not an error which is rectifiable or to be ignored, albeit it is a fatal error which vitiates the entire initiation itself. If charge itself is vague and not clear, then the onus cast upon the assessee under Explanation itself gets vitiated as assessee is precluded from a chance to give a specific rebuttal on that charge. It is a trite law that circumstances and facts for levy of penalty under both the grounds operate in a different fields. The courts have held that in the notice under section 274 r.w.s. 271, the AO has to specify the charge on which he intends to levy penalty. This aspect of the matter has been consistently reiterated by the Hon'ble High Courts from time to time.

15. We found that Notice dated 29/12/2008 issued by AO u/s.274 r.w.s. 271(1)(c) was on standard performa in which inappropriate words and paragraphs were neither struck off nor deleted. We also found that no satisfaction was recorded in the quantum order as to whether AO intends to initiate penalty proceedings for furnishing of inaccurate particulars of income or concealment of income. Thus, the assessing authority was

not sure as to whether he had proceeded on the basis that the assessee had either concealed its income or had furnished inaccurate particulars. Thus, the notices so issued are not in compliance with the requirement of the particular section and therefore it is a vague notice, which is attributable to a patent non-application of mind on the part of the assessing authority.

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 it is 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.*

10. 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.

22. 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?"*

23. The aforesaid question was dealt with by the Honble 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."*

24. 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.

25. The Hon'ble jurisdictional 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 also 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"*

26. 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.

27. In addition to the aforesaid binding judgments, there are several orders passed by co-ordinate Benches of the Tribunal on this very point. In all those orders also penalty levied u s. 271(l)(c) of the Act on the basis of similar vague notice was cancelled.

28. In view of the above discussions, we do not find any merit for the penalty so imposed., accordingly, AO is directed

to delete the penalty of Rs. 8,41,500/- so imposed u/s.  
271(1)(c) of the IT Act.

29. In the result, assessee's appeal for A.Y. 2006-07 is  
**allowed.**

*Order pronounced in the open court on 6<sup>th</sup> August, 2018*

Sd/- (R. C. Sharma) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : 06.08.2018 Sr.PS. Dhananjay	Sd/- (Sandeep Gosain) न्यायिकसदस्य / Judicial Member
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**  
(Dy./Asstt.Registrar)  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**