

*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.496/Ind/2017  
Assessment Years 2007-08

Shri Akhilesh Kumar Gupta, Plot No.162, Shop G, Ashirvad Complex, Zone-I, M.P. Nagar, Bhopal		ITO-1(2), Bhopal
(Appellant)		(Respondent )
PAN No.AENPG0415N		

Revenue by	Shri K.C. Selvamani, Sr.DR
Assessee by	Shri S.S. Solanki, CA
Date of Hearing	07.01.2019
Date of Pronouncement	10.01.2019

**ORDER**

**PER MANISH BORAD.**

The above captioned appeal is filed at the instance of assessee pertaining to Assessment Year 2007-08 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Bhopal dated 30.05.2017 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 19.05.2014 framed by ITO-1(2), Bhopal.

2. The assessee has raised following grounds of appeal;

*“1. That in the facts and circumstances of the case, the Ld. CIT(A) erred in confirming levy of penalty of Rs.5,00,000/- u/s 271(1)(c) of the Act.*

*2. That the order of penalty passed by the A.O and sustained by CIT(A) is bad in law and ought to be set aside.”*

**ADDITIONAL GROUNDS OF APPEAL**

*3. That the learned AO erred in issuance of notice us/ 271(1)(c) without there being any satisfaction of the AO as to on which limb penalty proceedings are initiated. Blanket penalty proceedings so initiated being illegal and wrong, the penalty require to be cancelled.*

*4. That the learned AO erred in imposing penalty of Rs.5,00,000/- by invoking both the limbs of the penalty i.e. (i) furnishing of inaccurate particulars and (ii) concealment of particulars of his income. The penalty so imposed by invoking both the limbs is illegal and wrong. The penalty order so passed being illegal and wrong, the same require to be annulled.*

*5. That the learned AO erred in passing penalty order u/s 271(1)(c) by solely relying on the order u/s 143(3). That penalty being a separate proceedings and its not that on every addition confirmed penalty will be imposed. The order of AO so passed and confirmed learned ) is illegal and wrong, the same require to be deleted”.*

3. The sole issue raised in this appeal is against the confirmation of levy of penalty of Rs.5,00,000/- u/s 271(1)(c) of the Act.

4. Briefly stated facts as culled out from the records are that the assessee is an individual engaged in the business of wholesale and retail trading of plywood, door shutters, ceiling tiles and soft board etc. Return of income for the Assessment Year 2007-08 declaring income of Rs.5,27,681/- filed on 31.10.2018. A survey u/s 133A of the Act had taken place at the business premises of M/s. Aradhana Distributors where Shri Akhilesh Kumar Gupta was the proprietor on 13.9.2006 and 14.09.2006. During the course of survey excess stock of plywood worth Rs.15,15,430/- and excess cash of Rs.3,97,483/- was found and the appellant surrendered the same and advance taxes of Rs.5,95,000/- were also paid by the appellant. As the assessee retracted and did not accepted his declaration, the case taken for scrutiny and notice u/s 143(2) was issued on 11.09.2008. The income of Rs.24,78,068/- assessed u/s 143(3) adding excess stock at Rs.15,15,430/- rent at Rs.1,25,632/-, stock difference at Rs.2,99,325 and expenses at Rs.10,000/-. Penalty u/s 271(1)(c) of the Act of Rs.5,00,000/- was levied for furnishing inaccurate particulars/concealed particulars of income. Aggrieved assessee preferred appeal before Ld. CIT(A) against the penalty levied u/s 271(1)(c) at Rs.5,00,000/- but could not succeed.

4. Now the assessee is in appeal before us.
5. Ld. Counsel for the assessee submitted that the Ld.AO in order U/S 143(3) dated 31.12.09 initiated the penalty proceedings by holding as under :\_

(i) "Penalty proceedings u/s 271 (I )( c) initiated separately. I am satisfied for issuing penalty notice u/s 271(1)(c) of the Income Tax Act, 1961".

(ii) In the penalty notice attached with the order the following was mentioned:- "In connection with the penalty proceedings U/S 271(I)(c) for the assessment years 2007-08 you are requested to attend my office on or before 21.01.2010 at 11:00AM to show cause why penalty should not be imposed".

6. He submitted that it is a settled law that blanket penalty proceedings so initiated are bad in law and the notice so issued require to quashed. The AO while passing the order u/s 271(I)(c) also imposed penalty by holding as under:-

"In these circumstances, I am satisfied that the assessee has furnished inaccurate particulars/concealed particulars of his income amounting to Rs.14,54,260/- and is liable for penalty u/s 271(1)(c) of the Income Tax Act,1961".

7. He further submitted that even at the time of imposition of

penalty, the AO was not sure as to on which limb penalty is to be imposed. On this count only the penalty order is liable to be quashed. On merits also, no penalty u/s 271 (1)( c) is leviable as the assessee has explained facts of the case with documentary evidence. Further the addition has been made by estimating G.P and working out stock at a given date assuming that G.P% remains same throughout the year. The penalty so levied on estimated addition is illegal and wrong. Merely because the AO is not satisfied about the explanation, no penalty is leviable. For this proposition reliance is placed on following decisions:-

- (i) CIT vs. Reliance Petroproducts P. Ltd. 322 ITR 0158(SC)
- (ii) T. Ashok Pai vs. CIT 292 ITR 0011 (SC)
- (iii) Bhagirath Prasad Bilgaiya vs. CIT 139 ITR 0902 (MP)
- (iv) CIT vs. S.M. Construction (ITA No.412/2013)(Mumbai HC)
- (v) CIT vs. Gem Granites 86 CCH 0160(Chennai HC)
- (vi) CIT vs. Agrawal Round Rolling Mills Ltd. 88 CCH 0036(SC)
- (vii) CIT vs. Manjunath Cotton & Ginning Factory 83 CCH 0282 (Karnataka HC)
- (viii) National Thermal Power Co. Ltd V/s CIT (1999) 157 CTR 0249.
- (ix) Principal Commissioner of Income Tax V/s Kulwant Singh

Bhatia ITA No.9 to 14 of 2018 (M.P. High Court)

(x) Principal Commissioner of Income Tax V/s Smt. Baisetty Revathi ITA No.684 of 2016 High Court of Judicature at Hyderabad.

(xi) CIT V/s Shri Samson Perinchery ITA No.1154 of 2014 High Court of Judicature at Bombay.

(xii) CIT V/s M/s. SSA's Emerald Meadows ITA No.380 of 2015 High Court of Karnataka.

(xiii) M/s. ABR Auto Pvt. Ltd V/s ACIT Circle 1(1), ITAT Delhi Bench ITA No.6236/Del/2015

(xiv) DCIT-1(2)(2) V/s M/s. Pennzoil Quaker State India Ltd. ITAT Mumbai Bench ITA No.7386/MUM/2014

(xv) M/s. Orbit Enterprises V/s ITO 15(2)(2) ITAT Mumbai Bench ITA No.1596 & 1597/MUM/2014

(xvi) S. Chandrasekhar Vs. ACIT ITA No.386/2016 High Court of Karnataka.

8. Per contra Ld. Departmental Representative vehemently argued and supported the orders of lower authorities.

9. We have heard rival contentions and perused the records placed before us and carefully gone through various judgments

referred and relied by the Ld. Counsel for the assessee. Apart from challenging the merits of the case relating to penalty levied u/s 271(1)(c) of the Act at Rs.5,00,000/-, Ld. Counsel for the assessee has also raised additional legal ground challenging the legality of the penalty proceedings initiated by issuance of notice u/s 274 r.w.s. 271(1)(c) of the Act and submitted that at the time of issuance of notice Ld. A.O has not mentioned as to for which limb i.e. for concealment of particulars of income or for furnishing inaccurate particulars of income, penalty proceeding have been initiated.

10. In view of the judgment of Hon'ble Apex Court in the case of National Thermal Power Co. Ltd (*supra*) , we have admitted this legal ground for adjudication and are proceeding to deal with the same.

11. It is an established position of law that the Ld.A.O at the time of issuing notice u/s 274 r.w.s. 271(1)(c) of the Act has to give positive and clear cut finding in the body of the show cause notice itself reflecting the charges against the assessee as to whether penalty proceeding are initiated for concealment of particulars of

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income or for furnishing inaccurate particulars of income. To examine this fact we will first go through the penalty show cause notice which has been reproduced below;

OFFICE OF THE

Income Tax Officer -1(2)

AAYAKAR BHAWAN, HOSHANGABAD ROAD, BHOPAL

Bhopal Dated 16. 2.2013

PAN AENPG0415n D.No.1072

PENALTY NOTICE u/s 271 (1)(c) OF INCOME TAX ACT, 1961

To

Shri Akhilesh Kumar Gupta

Prop. M/s Aradhana Distribute s, Plot No. 162

Shop No. G, Ashirwad Complex,

Zone-I, M.P. Nagar, Bhopal

Sir / Madam,

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

of the Income Tax Act 1961 for the AY 2007-08

In connection with the penalty proceedings u/s. 271 (1) (c) for the assessment year(s) 2007-08 you are requested to attend my office on or before 03.01.2014 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/-

(Binay Kumar Rai)

Income Tax Officer -1 (2), Bhopal

12. From going through the above penalty notice dated 16.12.1013 we find that there no whisper about the specific charge leveled against the assessee and notice seems to be issued on a set format and the same evidently lacks to mention the specific charge to be leveled against the assessee for initiating the penalty proceedings u/s 271(1)(c) of the Act.

13. 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*”.

14. 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”.*

15. Examining the facts in the light of the above referred judgments we find that in the body of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act the Ld.A.O 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”.

16. 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 19.5.2014 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.5,00,000/- 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.

17. Since the penalty u/s 271(1)(c) of the Act has already been deleted by us allowing the legal ground discussed above, other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are academic in nature and therefore remaining grounds are rendered infructuous.

18. In the result appeal of the assessee pertaining to Assessment Years 2007-08 challenging the penalty of Rs.5,00,000/- levied u/s 271(1)(c) of the Act is allowed.

The order pronounced in the open Court on 10.01.2019.

*Sd/-*

*Sd/-*

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 10 January, 2019

/Dev

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

By Order,  
Asstt.Registrar, I.T.A.T., Indore