

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.161/Ind/2018
Assessment Year 2009-10

Shri Vijay Hariramani, 61-B, Kasturba Nagar, Bhopal (Appellant)	Vs.	Asstt. Commissioner of Income Tax -4(1), Bhopal (Respondent)
PAN No.AAGPH6333P		

Revenue by	Shri R.S. Ambedkar, Sr.DR
Assessee by	Shri Girish Agrawal ,CA
Date of Hearing	08.05.2019
Date of Pronouncement	16.05 2019

ORDER

PER MANISH BORAD, AM.

This appeal is filed at the instance of the assessee pertaining to Assessment Year 2009-10 and is directed against the order of Ld. Commissioner of Income Tax(Appeals)-2 (in short 'CIT(A)'), Bhopal dated 05.01.2018 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 21.03.2016 framed by ACIT-4(1), Bhopal.

2. The assessee has raised following grounds of appeal;

1. *That on the facts of the case and in the circumstances of the case and in law, the order of penalty is bad in law and without jurisdiction, hence be cancelled.*
2. *That on the facts of the case and in the circumstances of the case and in law, the penalty has been levied on the basis of vague and non specific show cause notice, hence the order of penalty is unsustainable in law, hence be cancelled.*
3. *That on the facts of the case and in the circumstances of the case and in law, in absence of clear findings about the charge for which the penalty is imposed, the penalty order is bad in law and, therefore, be cancelled.*
4. *That on the facts of the case and in the circumstances of the case and in law, the addition sustained at Rs.821000 does not represent the concealed income of the assessee of the year within the meaning of section 271(1)(c) of the Act, hence the levy of penalty is not justified and, therefore, be cancelled.*
5. *That on the facts of the case and in the circumstances of the case and in law, and having regard to the explanation furnished before the learned lower authorities, it be held that the levy of penalty is neither justified nor lawful and, therefore, the same be kindly cancelled.”*

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 29.07.2009 for Assessment Year 2009-10 declaring income of Rs.34,55,060/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act on 16.12.2011 assessing total income at Rs.52,57,720/- by making various disallowances. The penalty proceedings u/s 271(1)(c) at Rs.9,21,000/- on addition of undisclosed interest income was initiated. Aggrieved assessee preferred appeal before Ld. CIT(A) but partly succeed in getting relief of Rs.1,00,000/- against the penalty imposed.

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 at Rs. 8,21,000/-.

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 any

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 levy of penalty at Rs.8,21,000/- levied by the Ld. A.O and 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

Vijay Hariramani
ITA No.161/Ind/2018

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 16.12.2011 for initiating the penalty proceedings u/s 271(1)(c) of the Act for Assessment Year 2009-10. For reference we reproduce below the notice u/s 271(1)(c) of the Act for Assessment Year 2009-10;

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

OFFICE OF THE
Joint Commissioner of Income Tax-Range-2
Aayakar Bhawan, Hoshangabad Road, Bhopal

Bhopal Dated 16/12/2011

PAN AAGPH6333P

To

Shri Vijay Hariramani,
11, New Market, Bhopal

Sir,

Sub:- Penalty proceedings u/s 271(1)(c) of the Income Tax Act
1961 for the ASSESSMENT YEAR 2009-10

In connection with the penalty proceedings u/s 271(1)(c) for the assessment year(s) 2009-10 you are requested to attend my office on or before 31/01/2012 at 11.30 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/-

(D.N. Parakh)

Joint Commissioner of Income Tax, range-2, Bhopal

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 Commissioner of Income 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

Vijay Hariramani
ITA No.161/Ind/2018

Act dated 16.12.2011 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*. We accordingly direct to delete the penalty of Rs.8,21,000/- for Assessment Years 2009-10 imposed u/s 271(1)(c) on this ground itself.

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

The order pronounced in the open Court on 16.05.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 16 May, 2019

/Dev

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

By order
Assistant Registrar, ITAT, Indore