

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. A.D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5821/Del/2019 : Asstt. Year: 2008-09

ITA No. 5822/Del/2019 : Asstt. Year: 2009-10

ITA No. 5823/Del/2019 : Asstt. Year: 2010-11

ITA No. 5824/Del/2019 : Asstt. Year: 2011-12

Malook Nagar, D-3/10, Paschimi Marg, Vasant Vihar, New Delhi-110057	Vs	ACIT, Central Circle-15, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ADKPN2266L		

**Assessee by : Sh. Akshat Jain, CA &
Sh. Rajat Jain, CA**

Revenue by : Sh. Bhavnesh Kulsheshtha, CIT DR

Date of Hearing: 12.05.2022

Date of Pronouncement: 13.05.2022

ORDER

Per Bench:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-XXVI, New Delhi dated 22.04.2019.

2. Since, the issues involved in all these appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 5821/Del/2019 , following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the penalty order passed by the AO is bad both in the eyes of law and on facts.

2. That the Ld. CIT(A) has grossly erred both in law and on facts in upholding levy of penalty of Rs 2,07,200/- u/s 271(1)(c) of the Act.

3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts & in law in upholding the levy of penalty u/ s 271(1)(c) of the Act without appreciating the fact that there was no concealment or furnishing of inaccurate particulars of income by the appellant as contemplated u/s 271(1)(c) of the Act.

4. That on the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts & in law in upholding levy of penalty of Rs 2,07,200/- u/s 271 (1)(c) of the Act on addition sustained on ad-hoc, estimated basis without bringing any material on record to prove that there was concealment or furnishing of inaccurate particulars of income on the part of appellant.

5. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred both on facts & in law in upholding levy of penalty of Rs 2,07,200/- u/ s 271(1)(c) of the Act without considering the fact that explanation offered by the appellant was not acceptable to the Ld. AO would not itself amount to concealment or furnishing of inaccurate particulars of income by the appellant as contemplated u/s 271(1)(c).

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred both on facts & in law in upholding levy of penalty of Rs 2,07,200/- u/ s 271(1)(c) of the Act, without appreciating the fact that the Ld. AO has imposed penalty by charging the appellant as guilty of furnishing inaccurate particulars of income by mechanically invoking provision of Explanation 1 of Section 271(1)(c) of the Act while

the same can be invoked for the charge of concealment of income.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred both on facts & in law in upholding levy of penalty of Rs 2,07,200/- u/ s 271(1)(c) of the Act, without appreciating the fact that AO explicitly fails to specify in the show cause notice issued u/s 274 r. w. s. 271 of the Act that under which limb of section 271 (1)(c), penalty proceedings has been initiated i.e. either for concealment of income or for furnishing of inaccurate particulars of income, which makes the penalty order passed without jurisdiction, which is bad in law and liable to be quashed.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts & in law in justifying levy of penalty by arbitrary and mechanically applying the provisions of Explanation 5A of Section 271(1)(c) without appreciating the fact that no addition was made on the basis of any money, bullion, jewellery, other valuable article or document etc. found and seized during the search action carried under section 132 of the Act and therefore, provisions of Explanation 5A of Section 271 (1)(c) are not applicable in the case of the appellant."

4. The Assessing Officer made addition on account of agricultural income to the total income. Subsequently, the Tribunal determined agricultural income @ Rs. 10,000/- per acre. Consequent to the addition, penalty u/s 271(1)(c) has been levied by the AO.

5. We find that the page no. 2 , the Assessing Officer has also mentioned "*since, the assessee has concealed particulars of his income. I am satisfied that this is a fit case for initiating penalty proceedings u/s 271(1)(c) of the of the Income Tax Act, 1961.*"

6. We also find that the para no. 6 of the penalty order reads as under:

" 4 . In view of the above, I hereby hold that this is a fit case for levy of penalty as the assessee had furnished inaccurate particulars of income thereby concealing true particulars of such income."

7. We have also gone through the notice u/ s 274 r.w.s. 271 of the Income Tax Act, 1961 issued by the Assessing Officer on 15.10.2018. We find that the Assessing Officer has issued the penalty order stating that, *you " have without reasonable cause failed to comply with a notice u/ s 22(4)/ 23(2) 4 of the Indian Income Tax Act, 1922 or u/ s 142(1)/ 143(2) of the Income Tax Act, 1961 . No..... dated....." have concealed the particulars of your income..... furnish inaccurate particulars of such income."*

8. On this issue, we are guided by the following judgments:

- 1) Karnataka High Court: CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274 should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.
- 2) Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271 (1)(c): Penalty-Concealment-Non- striking off of the irrelevant part while issuing notice u/s 271 (1)(c) of the Income Tax Act, order is bad in law. Assessee must be informed of the ground of the penalty proceedings only

through statutory notice. An omnibus notice suffers from the vice of vagueness.

- 3) The Hon' ble jurisdictional Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 of 2019, reiterated that notice under section 274 should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.
- 4) The aforesaid principle has been reiterated in the in the case of CIT vs. SSA' S Emerald Meadows: 73 taxmann. com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]

9. Hence, respectfully following the order of the Hon' ble Jurisdictional High Court, since the AO has not been specified u/ s 274 as to whether penalty is proposed for alleged 'concealment of income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

10. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 13/05/2022.

Sd/-

(A.D. Jain)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 13/05/2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR