

<i>Serial No. 12</i>
<i>Regular Cause List</i>

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**ITA 7/2019**

**Pr. Commissioner of Income Tax**

**...Appellant/Petitioner(s)**

Through: Mr. Umar Rashid Wani, Advocate

**Vs.**

**J & K Power Development Corporation  
Limited**

**...Respondent(s)**

Through: Mr. Ab. Rashid Malik, Sr. AAG with  
Mr. Mohd Younis Hafiz, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.  
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.**

**ORDER  
15.10.2024**

1. This appeal, filed by the Principal Commissioner of Income Tax, Jammu, under Section 260-A of the Income Tax Act, 1961, is directed against an order dated 27<sup>th</sup> July, 2019, passed by the Income Tax Appellate Tribunal, Amritsar Bench (the "Tribunal") in ITI No. 339(ASR)/2016, filed by the respondent, for the assessment year 2011-12
2. From the perusal of the proceedings sheet, it transpires that this appeal is not formally admitted. However, this Court vide order dated 12<sup>th</sup> July, 2023, had proposed to take substantial questions of law for consideration at the time of final hearing, are proposed by the appellant in the Memo of Appeal.

3. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the questions of law proposed in the Paragraph No. 3 of the Memo of Appeal are not the substantial questions of law which require determination in the instant appeal. Most of the questions framed are questions of fact. We, however, find that the only question of law that needs determination in this case is as under:

“Whether the proceedings for imposition of penalty under Section 271(1)(c) of the Income Tax Act, 1961, can be vitiated if the satisfaction be derived by the Assessing Authority or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Principal Commissioner/ Commissioner, as the case may be, during the course of any proceedings under the Income Tax Act, is referable to both the limbs of clause (c) i.e., concealment of the particulars of the income and furnishing of incorrect particulars of such income together and in the alternative.”

4. We have heard learned counsel for the parties on the aforesaid issue and have gone through the judgment under appeal. In terms of Section 271(1) (c) of the Income Tax Act, 1961, penalty proceedings can be initiated provided the Assessing Officer or the Joint Commissioner (Appeals) or Commissioner (Appeals) etc., as the case may be, is satisfied that any person has *inter alia* concealed the particulars of the income or furnished the incorrect particulars of such income. Before taking the penalty proceedings to logical end, the Assessee

is also required to be put on notice for offering his explanation to such concealment or furnishing incorrect particulars of such income etc.

5. The Tribunal has on facts found that the notice which was served upon the Assessee for seeking his explanation was not clear and unambiguous. The Assessing Authority concerned had not recorded its satisfaction with regard to one of the two limbs or on both the limbs indicated in clause (c) of sub-section 1 of Section 271. The notice issued to the Assessee was a composite notice intimating the Assessee that he was liable to be proceeded for imposition of penalty for having concealed the particulars of his income/ for having furnished incorrect particulars for such income.

6. The Assessing Authority was itself not clear, whether it was a case of concealment of particulars of income by the Assessee or his failure to furnish correct particulars of such income. The Assessee too was deprived of a clear opportunity to give the explanation in view of the confusion created by the Assessing Authority itself. It is in these circumstances, the Tribunal, after relying upon the several precedents, came to the conclusion that it was a case where the Assessee had not given the proper opportunity to offer his explanation and, therefore, the impugned order of imposition of penalty was vitiated being in violation of the principles of natural justice. The Tribunal also found fault with the requisite satisfaction which the Assessing Authority was required to arrive at before initiating the penalty proceedings. We fully concur with the view taken by

the Tribunal. We, however, find that the Tribunal while accepting the appeal of the respondent and setting aside the impugned order of penalty did not give liberty to the Income Tax Authorities to issue fresh notice in accordance with law.

7. Be that as it may, the order impugned before us does not suffer from any illegality and, therefore, there is no case made out for interference with the judgment of the Tribunal. This appeal is, therefore, found without any merit and the same is accordingly **dismissed**. However, we leave it open to the appellants to proceed against the respondent, if it is required, strictly in accordance with law.

**(RAJESH SEKHRI)**  
**JUDGE**

**(SANJEEV KUMAR)**  
**JUDGE**

**SRINAGAR:**

15.10.2024

*"Mír Aríf"*

