

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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI S. RIFAUH RAHMAN (ACCOUNTANT MEMBER)

I.T.A. No.2138/Mum/2018
(Assessment year 2010-11)

Dy.Commissioner of Income-tax, Circle-3, Thane	vs	The Thane District Central Co- operative Bank Limited, 1, Chhatrapati Shivaji Path, Post Box No.11, Thane (W)-400 601 PAN : AAAAT0739N
APPELLANT		RESPONDENT

C.O. 215/Mum/2019
(Arising out of I.T.A. No.2138/Mum/2018)
(Assessment year 2010-11)

The Thane District Central Co- operative Bank Limited, 1, Chhatrapati Shivaji Path, Post Box No.11, Thane (W)-400 601 PAN : AAAAT0739N	vs	Dy.Commissioner of Income-tax, Circle-3, Thane
CROSS OBJECTOR		RESPONDENT

Revenue by	Mrs. Padmaja Siripurapa, CIT (DR)
Assesseeby	Shri Ashok Patil, AR

Date of hearing	03-06-2021
Date of pronouncement	28-06-2021

ORDER**Per : Saktijit Dey (JM):**

Captioned appeal and cross objection arise out of an order dated 30-01-2018 of learned Commissioner of Income Tax (Appeals)-2, Thane, deleting penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2010-11.

2. Pertinently, though, learned Commissioner (Appeals) has deleted the decided issue in favour of the assessee on merits, however, the assessee has filed the cross objection challenging the decision of learned Commissioner (Appeals) upholding the validity of the penalty order passed under section 271(1)(c) of the Act on account of defect in the show causer notice issued under section 274 r.w.s. 271(1)(c) of the Act.

3. Since, the aforesaid issued raised in the cross objection is a purely legal and jurisdictional issue going to the root of the matter, in our considered opinion, such issue has to be decided at the very outset. However, before we proceed to decide the aforesaid issue, it must be observed, registry has pointed out a delay of 59 days in filing the cross objection.

4. The assessee has filed an application seeking condonation of delay accompanied by an affidavit. It is the submission of the assessee that the memorandum of appeal filed by the department as received by the assessee was handed over to the counsel, who generally appears for the assessee in tax litigations. It is submitted, though, the counsel for the assessee had advised for filing of the cross objection, in spite of the appeal having been decided in favour of the assessee on merits; however, the cross objection could not be filed in time as the officials of the assessee were tied up with the statutory and other audit

going on at the bank between February, 2019 to August, 2019. Thus, due to inadvertence, the cross objection could not be filed in time. The learned departmental representative opposed condonation of delay.

5. Having considered rival submissions and perused the averments made in the application seeking condonation of delay as well as the affidavit, we are satisfied that the delay in filing the cross objection was due to bonafide reasons and not deliberate. Accordingly, condoning the delay, we admit the cross objection for adjudication on merit.

6. Briefly the facts are, the assessee is a co-operative bank registered with the Government of Maharashtra. As stated by the assessing officer, the assessee is engaged in banking operation as per framework of Banking Regulation Act, 1949 and guidelines issued by Reserve Bank of India (RBI), from time to time. For the assessment year under dispute, assessee had filed its return of income on 14-10-2010 declaring total income of Rs.13,18,31,547/-. In course of assessment proceedings, the assessing officer noticed that the assessee has claimed deduction of Rs.36,74,91,638/- under section 36(1)(viiia) in respect of provision for bad and doubtful debt relating to rural branches. After calling for necessary details relating to the claim of deduction and examining them, the assessing officer observed that certain branches in respect of which the assessee had claimed the deduction, do not qualify as rural branches, as, the population in those areas are not below 10,000 as per the 2001 census. Further, he observed, the assessee has created a provision of Rs.350 lakhs in its accounts, whereas, it has claimed deduction of Rs.36,74,91,638/-. Thus, relying upon certain judicial precedents, the assessing officer held that the assessee has claimed excess deduction to the extent of Ra.33,24,91,638/-. Accordingly, after disallowing the

said amount, the assessing officer added back the same to the income of the assessee. Based on such addition, the assessing officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order on 30-06-2027 imposing penalty equivalent to 100% tax on the income in respect of which, the assessee allegedly furnished inaccurate particulars of income. Against the penalty order so passed, assessee preferred appeal before learned Commissioner (Appeals). After considering the submissions of the assessee and taking note of the fact that under similar facts and circumstances, penalty imposed under section 271(1)(c) of the Act in assessment years 2008-09 and 2009-10 were deleted by the Tribunal, learned Commissioner (Appeals) deleted the penalty imposed.

7. Learned Counsel for the assessee submitted, in the show cause notice issued under section 274 r.w.s. 271(1)(c) of the Act, the assessing officer has not specifically indicated which limb of section 271(1)(c) of the Act would be applicable. In this context, he drew our attention to a copy of the show cause notice placed at page 46 of the paper book. Thus, he submitted, by not mentioning the specific limb of section 271(1)(c) of the Act under which the assessing officer intended to impose penalty, the penalty order passed is vitiated. In support of such contention, he relied upon the Full Bench decision of the Hon'ble jurisdictional High Court in case of Mohammed Farhan A Shaikh vs DCIT (2021) 200 DTR (Bom)(FB) 65. He also relied upon a decision of the Division Bench of the Hon'ble jurisdictional High Court in case of Ventura Textiles Ltd vs CIT (2020) 426 ITR 478 (Bom). Further, he submitted, under identical facts and circumstances, due to defect in the show cause notice issued under section 274 of the Act, the Tribunal in assessee's own case for assessment years 2008-09 and

2009-10 has deleted penalty imposed under section 271(1)(c) of the Act. Further, he submitted, in assessment year 2009-10, the Tribunal has also dealt with the merits of the issue and deleted the penalty holding that disallowance of a deduction claimed by the assessee cannot lead to imposition of penalty under section 271(1)(c) of the Act. In this context, he drew our attention to the orders passed by the Tribunal in assessment year 2008-09 and 2009-10 placed in the paperbook. Thus, he submitted, the penalty imposed was rightly deleted by learned Commissioner (Appeals).

8. Per contra, learned Departmental Representative, apart from making submissions at the time of hearing has also filed the following written submissions:-

**“WRITTEN SUBMISSION IN ITA 2138M18 AND CO 215M19
THE THANE DISTRICT CENTRAL COOPRATIVE BANK LTD
AY 2010-11 HEARD BY HON'BLE E BENCH . ITAT MUMBAI
ON 3.06.2021**

1. The captioned appeal is by Revenue and the CO is by assessee. The appeal is against the order of the Ld CIT A deleting the penalty levied u/s 271 [1] (c). Revised grounds of appeal were filed on 21.08.2019 by the DCIT Circle 3, Thane.

The CO is against the additional legal ground that was raised before the CIT A and dismissed although the matter was decided in favour of the assessee Bank on merits. The CO was filed on 5.09.2019, per the assessee and there is a delay of 143 days in filing the CO.

2. Asst u/s 143(3) : The Ld AO in the assessment order u/s 143(3) dt. 14.03.2013 made an addition of Rs 36,74,91,368/- on account of disallowance of deduction u/s 36 (1)(yia) and restricted the deduction to Rs 3,50,00,000/- to the extent of provision made for expenditure debited to P and L account. (Please see para 1 , pp 1 of the penalty order u/s 271 (1) (c) dt 30.06.2017 for AY 10-11.)

3. Order of the Hon'ble ITAT on quantum addition : Please see the order of the Hon'ble ITAT , E Bench in ITA 7295/M/2014 in assessee's own case for AY 10-11. The Hon'ble ITAT has upheld the

addition in the assessment on account of disallowance of deduction u/s 36(l)(viia) .

4. Penalty order u/s 271(l)(c) : Please see the penalty order u/s 271(1)(c) dt 30.06.2017 for AY 10-11. The facts of the assessment are at para 1, pp 1.

At para 2, pp 1 , the details of the disallowance are referred to. Three branches of the assessee bank were claimed to be rural branches. On scrutiny of population certificates and on admission by the assessee bank, three branches were established to be not rural branches. The aggregate advances made by the eligible rural branches was Rs 29,04,18,518 against the claim of Rs 33,00,42,399 by the assessee.

At para 2.2, pp 2, the AO has detailed the excess claim of deduction of Rs 33,24,91,638 and the restriction of the claim u/s 36(l)(viia) to the extent of provision made for expenditure debited to P and L account.

From the discussion at para 4, pp 3, it is clear that the assessee was aware that the prevalent law was against it

The reply of the assessee bank to the notice u/s 271(1)(c) is reproduced at para 5. This reply dt 27.6.2017 clearly shows that the assessee has met both the limbs of concealment and furnishing of inaccurate particulars.

Please see para 6 of the penalty order wherein the Ld AO has given his detailed reasoning for levy of penalty u/s 271(l)(c) on account of both concealment and furnishing of inaccurate particulars of income . The Ld AO states, " *However the fact remains that the assessee consciously and deliberately made the following claims with a view to conceal the true particulars of income ...* " The Ld AO has highlighted the claim of deduction under second limb of Sec 36(l)(viia) even though the branches did not qualify as rural branch and claim of deduction of Rs 36.75 cr u/s Sec 36(l)(viia) even though only Rs 3.5 cr was provided and debited in the P and L account. Thus, the penalty order demonstrates that the penalty u/s 271(1)(c) was levied on account of both concealment and furnishing of inaccurate particulars of income.

S.Penalty notice u/s 271(l)(c) dt 14.03.2013: A copy of this notice has been furnished by the assessee in its paper book at pp 46. In this notice, both the limbs of concealing the particulars and furnishing inaccurate particulars of income remain without striking off.

6. Impugned order of the Ld CIT A dt 30.01.2018: The decision of the Ld CIT A is at para 6, pp 9. The Ld CIT A has dismissed the additional ground raised by the assessee with respect to the appeal of the assessee that the penalty notice was bad in law due to the limbs of concealment / furnishing of inaccurate particulars not being struck off.

Curiously, the CIT A at para 6.1, pp 10 has relied on the orders of the Hon'ble ITAT, D Bench in its own case for AY 08-09 and 09-10. This order of the ITAT which is relied on is based on the ratio of non-striking of limbs in the penalty notice. Thus, the Ld CIT A at para 6.2 deletes the penalty by relying on earlier years orders of the ITAT and a passing reference to Reliance Petro, 322ITR158SC.

The non-application of mind by the Ld CIT A is amply evident. He wrongly relies on the earlier years orders which are on non-striking off, while dismissing the identical additional ground of the assessee by relying on the decision of the Hon'ble ITAT in Earthmoving Equipment, which was the law prevalent at the time of passing the order.

The Ld CIT A has discussed the facts of the disallowance in detail at para 3 and has also detailed the outcome of the disallowance in the appeal before the ITAT. He is also aware that disallowances on identical grounds were made in the earlier assessment years. Yet, the Ld CIT A chose to take shelter under Reliance Petro without any detailed reasoning as to the application of this decision to the present case.

The Hon'ble SC in Reliance Petro was based on the factual matrix of penalty u/s 271(1) (c) arising from disallowance u/s 14 A. The Hon'ble SC held that making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. The Ld CIT A has not given any reasoning as to how the repeated claim across AYs u/s 36(IJ(yiiaJ and also the fact of claim of non-rural branches as rural branches would not tantamount to furnishing of inaccurate particulars and concealment. It is amply evident that the Ld CIT A has demonstrated total non-application of mind and further lack of reasoning in arriving at his decision.

7. HON'BLE BOM HC : The decision of the Hon'ble HC of Bombay in Mohd. Farhan A Shaikh dt 11.03.2021 [[2021] 125 taxmann.com 253 (Bombay)] unambiguously states that where assessment order clearly records satisfaction for imposing penalty on one or the other, **or both grounds** mentioned in Sec 271(IJ(c), a mere defect in notice, not striking of relevant matter would vitiate penalty proceedings.

Please see paras 32 to 39. The Hon'ble Bombay High Court in this decision has discussed threadbare all the decisions of various High Courts of the land on the issue of non-striking of limbs of penalty u/s 271(1)(c) in the penalty notice. In these paras where the decision of the Hon'ble HC of Karnataka in Manjunatha Cotton is discussed the possibility of both the limbs being invoked is established. At para 38 it is stated that,"... Indeed some cases may attract both the offences and some other cases may have an overlapping of two offences. Then, in such cases, too, the penalty proceedings must be for both offences..."

At para 188 , the decision reads that,"... it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity."

The penalty notice has charged the assessee with both the limbs of concealment and furnishing of inaccurate particulars. The assessee has in fact met this charge in its reply at S no 2,4,7,9, and 10 reproduced at para 5 of the penalty order. The penalty order accordingly levied penalty u/s 271(1) (c] due to both the limbs of concealment and furnishing of inaccurate particulars being established.

Thus , it is amply evident that there is no infraction in fact and in law with respect to the penalty notice issued u/s 271(1] (c].

8. Merits of the levy of penalty u/s 271(1) (c) have been discussed at length in para 6 of the penalty order. The claim of the disallowance has been made repeatedly over several assessment years. The argument of the Ld Counsel for assessee that the population certificates in respect of rural branches have now been obtained which clearly establish that these are indeed rural cannot be allowed as this was never before the AO in assessment proceedings, before the CIT A or ITAT in quantum appeal proceedings, and never before the AO in penalty proceedings. This evidence was not adduced even in the hearing even though three paper books were furnished by the assessee bank.

The argument of the assessee that the Hon'ble Bom HC has admitted a question of law in the case of Mahalaxmi Coop Bank on the issue of disallowance u/s 36 (1) (viiia) is of no relevance as the assessee has neither gone in appeal in its own case on quantum nor sought for the penalty appeal to be kept in abeyance till the outcome of the appeal in Mahalaxmi Coop Bank. The decision of the ITAT in Mahalaxmi was

in fact relied upon by the ITAT in the case of the assessee to uphold the disallowance.

In view of the above, it is humbly submitted that the appeal of Revenue be allowed and the CO filed by the assessee bank be dismissed.”

9. We have considered rival submissions and perused materials on record. Undisputedly, the assessee has challenged the validity of the penalty order passed under section 271(1)(c) of the Act because of the defective show cause notice issued by the assessing officer under section 274 r.w.s. 271(1)(c) of the Act. Pertinently, a perusal of the show cause notice dated 14-03-2017 issued under 274 r.w.s. 271(1)(c) of the Act, a copy of which is at page 46 of the paper book, makes it clear that the assessing officer has not mentioned the specific limb of section 271(1)(c) of the Act applicable to assessee, by striking off the inapplicable words. In fact, the assessing officer had again issued a notice dated 19-06-2017 to the assessee requiring to show cause why penalty under section 271(1)(c) of the Act should not be levied. However, a reference to the said notice, a copy of which is at page 47 of the paper book, would reveal that, though, the assessing officer has referred to his earlier show cause notice issued in the printed form; however, in the subsequent notice also he has not mentioned the specific limb of section 271(1)(c) of the Act for which he intended to impose penalty. Whereas, a perusal of the assessment order passed for the impugned assessment year clearly reveals that the assessing officer has initiated proceeding for imposition of penalty under section 271(1)(c) of the Act alleging furnishing of accurate particulars of income.

10. Further, a careful perusal of the impugned penalty order also reveals that the assessing officer has ultimately levied penalty under section 271(1)(c) of the Act on the charge of furnishing of inaccurate particulars of income. This fact is

clearly evident from the observations of the assessing officer at paragraph 8 and 9 of the penalty order. Thus, a conjoint reading of the assessment order and penalty order would reveal that the assessing officer, from the very beginning, intended to levy penalty under section 271(1)(c) of the Act for furnishing of inaccurate particulars of income. Whereas, in the show cause notice issued under section 274 r.w.s. 271(1)(c) of the Act on 14-03-2013, the assessing officer has mentioned both the limbs of section 271(1)(c) of the Act without striking off the words "concealed the particulars of your income". Even, in the subsequent show cause notice issued on 09-06-2017, though, not in a printed form, the assessing officer has still not disclosed the exact offence for which he intended to levy penalty.

11. Further, the following observations of the assessing officer in the remand report furnished to learned Commissioner (Appeals), as reproduced in the impugned order of learned Commissioner (Appeals), would set at rest the factual position regarding the specific limb for which penalty proceeding was initiated:-

"As would be seen, the assessing office has observed as under:-

"(b) In the quantum order, after due deliberations, it is clearly indicated by the AO that the penalty proceeding is initiated for furnishing inaccurate particulars which shows due application of mind qua penalty proceedings. However, while notice u/s 274 r.w.s. 271(1)(c) was issued for initiation of penalty proceedings striking off the irrelevant point was not done inadvertently."

Thus, there is a clear admission by the assessing officer that the show cause notice issued under section 274 r.w.s. 271(1)(c) of the Act is an omnibus/generic notice.

12. Keeping in view the aforesaid factual position, let us deal with the submissions of learned Departmental Representative. In this regard, the following submissions would be relevant:-

“The penalty notice has charged the assessee with both the limbs of concealment and furnishing of inaccurate particulars. The assessee has in fact met this charge in its reply at S no 2,4,7,9, and 10 reproduced at para 5 of the penalty order. The penalty order accordingly levied penalty u/s 271(1) (c) due to both the limbs of concealment and furnishing of inaccurate particulars being established.”

As could be seen from the above quoted portion, learned Departmental Representative has tried to make out a case that the assessing officer had intended to levy penalty under both the limbs of section 271(1)(c) of the Act. This submission of learned Departmental Representative is contrary to the facts on record. When the assessing officer has unequivocally accepted that penalty proceeding was initiated for the offence of furnishing inaccurate particulars of income, we are afraid, at this stage learned Departmental Representative cannot improve upon the admitted factual position.

13. Having dealt with the factual aspect, at this stage, it would be relevant to examine the Full Bench decision of the hon'ble jurisdictional High Court in case of Mohammed Farhan A Shaikh vs DCIT (supra). After conspectus of a catena of decisions on the impact of non striking off of inappropriate words in the show cause notice issued under section 274 qua the validity of the penalty proceeding, the hon'ble jurisdictional High Court has observed as under:-

“179. Besides, the prima facie opinion in the assessment order need not always translate into actual penalty proceedings. These proceedings, in fact, commence with the statutory notice under s. 271(1)(c) r/w s. 274. Again, whether this prima facie opinion is

sufficient to inform the assessee about the precise charge for the penalty is a matter of inference and, thus, a matter of litigation and arising out of uncertainty.

180. One course of action before us is curing a defect in the notice by the referring to the assessment order, which may or may not contain reasons for the penalty proceedings. The other course of action is the prevention of defect in the notice — and that prevention takes just a tick mark. Prudence demands prevention is better than cure.

Answers :

Question No. 1 : If the assessment order clearly records satisfaction for posing penalty on one or the other, or both grounds mentioned in s. 271(2)(c), does a mere defect in the notice — not striking off the the irrelevant matter — vitiate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under s. 271(1)(c) r/w.s. 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

182. More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the coireet proposition of law.

Question No. 2 : Has Kaushalya failed to discuss the aspect of 'prejudice'?

184. Indeed, Kaushalya did discuss the aspect of prejudice. As we have already noted, Kaushalya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushalya, "fully knew in detail the exact charge of the Revenue against him". For Kaushalya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, "the so-called ambiguous wording in the notice (has not) impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went on to observe that for sustaining the plea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Kaushalya closes the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done".

185. No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under s. 274. So asserts Kaushalya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.

186. That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers.

Kaushalya's insistence that the previous proceedings supply justification and cure the defect in penalty proceedings has not met our acceptance.

Question No. 3 : What is the effect of the Supreme Court's decision in Dilip N. Shroff on the issue of non-application of mind when the irrelevant portions of the printed notices are not struck off ?

187. In Dilip N. Shroff, for the Supreme Court, it is of "some significance that in the standard Pro-forma used by the AO in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the

same had not been done". Then, Dilip N. Shroff, on facts, has felt that the AO himself was not sure whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars.

188. We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for any ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays non-application of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

189. In Sudhir Kumar Singh, the Supreme Court has encapsulated the principles of prejudice. One of the principles is that "where procedural and /or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, "except in the case of a mandatory provision of law which is conceived not only in individual interest but also in the public interest".

190. Here, s. 271(l)(c) is one such provision. With calamitous, albeit the commercial, consequences, the provision is mandatory and brooks no trifling with or dilution. For a further precedential prop, we may that refer to Rqjesh Kumar & Ors. vs. CIT (2006) 206 CTR (SC) 175 : (2007) 2 SCC 181, in which the apex Court has quoted with approval its earlier judgment in State of Orissa us. Dr. Binapani Dei AIR 1967 SC 1269. According to it, when by reason of action on the part of a statutory authority, civil or evil

consequences ensue, principles of natural justice must be followed. In such an event, although no express provision is laid down on this behalf, compliance with principles of natural justice would be implicit. If a statute contravenes the principles of natural justice, it may also be held ultra vires Art. 14 of the Constitution.

191. As a result, we hold that Dilip N. Shroff treats omnibus show- cause notices as betraying non- application of mind and disapproves of the practice, to be particular, of issuing notices in printed form without deleting or striking off the inapplicable parts of that generic notice.”

14. A careful reading of the aforesaid observations/finding would make it amply clear that not only the hon'ble High Court has held that the earlier decision in case of Smt. Kaushalya & Others (1995) 216 ITR 260 does not lay down the correct proposition of law, but they have also very clearly and categorically held that the defect in the show cause notice by not striking off the irrelevant matter vitiates the penalty proceedings. This is so because the assessee must be informed of the grounds of the penalty proceedings only through the statutory notice. The hon'ble Court has observed that an omnibus notice suffers from the vice of vagueness. Proceeding further, the hon'ble Court has held that a penalty provision even for civil consequences, must be construed strictly and ambiguity, if any, must be resolved in assessee's favour. While coming to such conclusion, the hon'ble jurisdictional High Court has also referred to the decision of the hon'ble Supreme Court in case of Dilip N Shroff (supra), wherein, the hon'ble Supreme Court disapproved the routine ritualistic practice of omnibus show cause notice issued in printed form without deleting or striking off the inapplicable part, which

betrays non application of mind. Therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

15. Therefore, if we apply the ratio laid down in the aforesaid Full Bench decision of the hon'ble jurisdictional High Court to the facts of the present appeal, it can be seen that the assessing officer has issued a generic show cause notice in a printed form without mentioning the specific charge by striking off the inapplicable words. Thus, the show cause notice issued under section 274 r.w.s section 271(1)(c) is a vague and omnibus notice revealing complete non-application of mind by the assessing officer. Thus, viewed in the light of the ratio laid down by the Full Bench of the hon'ble jurisdictional High Court (supra), the penalty order passed under section 271(1)(c) of the Act, has to be declared as invalid. In fact, the Division Bench decision of the hon'ble jurisdictional High Court in case of Ventura Textiles Ltd vs CIT (supra) (also taken note of by the hon'ble Full Bench) also propounded similar legal principles.

16. It will be relevant to observe, in assessee's own case in assessment year 2008-09 vide ITA No.3043/Mum/2015 dated 16-06-2017, the Tribunal taking note of the fact that the show cause notice issued under section 274 r.w.s. 271(1)(c) of the Act suffers from defect as inapplicable words were not struck off, has deleted the penalty. Similar view was expressed by the Tribunal while deciding assessee's appeal for assessment year 2009-10 vide ITA No.5038/Mum/2015 dated 15-11-2017. Although, at that relevant point of time the Full Bench decision of the hon'ble jurisdictional High Court (supra) was not available before the bench; however, the legal principle followed by the Co-ordinate Bench is in conformity with the ratio laid down by the Full Bench of the Hon'ble jurisdictional High Court (supra).

17. Thus, respectfully following the Full Bench decision of the hon'ble jurisdictional High Court in case of Mohammed Farhan A Shaikh vs DCIT (supra) and the decision of Hon'ble Supreme Court in the case of Dilip N Shroff (supra), we hold the impugned order passed under section 271(1)(c) of the Act as invalid and without jurisdiction due to defect in the show cause notice issued under section 274 r.w.s. 271(1)(c) of the Act. Thus, the penalty order passed in pursuance thereto, being vitiated, has to be quashed. Accordingly, we uphold the decision of learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act, though, based on our own reasoning hereinabove.

18. Since, we have decided the legal issue, as raised in the cross objection, in favour of the assessee, we do not intend to dwell upon the merits.

19. In the result, cross objection is allowed as indicated above and revenue's appeal is dismissed.

Order pronounced on 28/06/2021.

Sd/-

sd/-

(S.RIFAUR RAHMAN)	SAKTIJIT DEY
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 28/06/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

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By Order

Asstt. Registrar, ITAT, Mumbai