

आयकर अपीलीय अधिकरण “D” न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 1532/Mum/2017
(निर्धारण वर्ष / Assessment Year 2007-08)

The Dy. Commissioner of Income Tax, Circle-7(2) Room No. 655, Aayakar Bhavan, Mumbai-400 020	Vs.	M/s Ruchi Soya Industries Ltd. Ruchi House, Royal Palms, Survey No.169, Aarey Milk Colony, Near Mayur Nagar Goregaon (East) Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACR2892L		

आयकर अपील सं./ ITA No. 187/Mum/2017
(निर्धारण वर्ष / Assessment Year 2007-08)

M/s Ruchi Soya Industries Limited Ruchi House, Royal Palms, Survey No.169, Aarey Milk Colony, Near Mayur Nagar Goregaon (East) Mumbai-400 020	Vs.	The Dy. Commissioner of Income Tax, Central Circle-7(2), Room No. 655, Aayakar Bhavan, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Bharat Andhle, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri S.S. Nagar, AR

सुनवाई की तारीख / Date of hearing:	10.08.2021
घोषणा की तारीख / Date of pronouncement :	31.08.2021



**ITAs No. 1532/Mum/2017 & 187/Mum/2017
Soya Ruchi Industries Ltd.; AY 07-08**

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

These cross appeals are arising out of the order of Commissioner of Income Tax (Appeals)-49, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-49/IT-419/2014-15 vide order dated 23.12.2016. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-40, Mumbai (in short 'ACIT/AO') for the A.Y. 2007-08 vide order dated 28.12.2011 under section 143(3) read with section 254 of the Income Tax Act, 1961 (hereinafter 'the Act'). The penalty was levied by DCIT under section 271(1)(c) of the Act vide order dated 25.03.2014.

2. The only common issue in these cross appeals is as regards to the order of CIT(A) deleting the penalty levied by Assessing Officer under section 271(1)(c) of the Act on the disallowance of notional interest on advances given by the assessee in the course of business.

3. At the outset, the learned Counsel for the assessee stated that the assessee's appeal be taken up first for the reason that the assessee has raised the issue as regards to the jurisdiction for levy of penalty by the Assessing Officer under section 271(1)(c) of the Act. For this, assessee has raised the following grounds: -

"1. Penalty proceedings initiated under section 271(1)(c) needs to be quashed:

On the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that notice issued under



**ITAs No. 1532/Mum/2017 & 187/Mum/2017
Soya Ruchi Industries Ltd.; AY 07-08**

section 271(1)(c) is invalid as it did not laid down whether it is concealment of facts or for furnishing of inaccurate particulars. Thus, the penalty proceedings initiated under section 271(1)(c) is invalid and needs to be quashed.”

4. The learned Counsel for the assessee stated that the assessment was framed by the Assessing Officer under section 143(3) read with section 254 of the Act and made disallowance of notional interest on the advance given by the assessee in the course of business amounting to ₹1,49,48,313/-. The Assessing Officer initiated the penalty proceedings under section 271(1)(c) of the Act by issuing notice under section 274 read with section 271(1)(c) of the Act vide notice dated 28.12.2011. The learned Counsel for the assessee drew our attention to the copy of notice filed along with Memo of appeal. He took us through the notice issued under section 274 read with section 271 of the Act for initiation of penalty proceedings under section 271(1)(c) of the Act. The learned Counsel for the assessee stated that the Assessing Officer has not deleted the inappropriate words whether the penalty is initiated under which charge i.e. for furnishing of inaccurate particulars of income or for concealment of particulars of income. The learned Counsel also stated that even the notice sent for penalty under section 274 of the Act. The relevant notice is enclosed as under: -



ITAs No. 1532/Mum/2017 & 187/Mum/2017
Soya Ruchi Industries Ltd.; AY 07-08

**NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE
INCOME TAX ACT, 1961.**

PAN :-AAACR2892L

Penalty 83/11-1

Office of the
Asst. Commissioner of Income-tax,
Central Circle - 40, Room no 653,
Aayakar Bhavan, 6th Floor,
M.K. Road, Mumbai - 400 020.

Date: 28/12/2011

To,
The Principal Officer
M/s Ruchi Soya Inds. Ltd.
408, Tulsiani Chambers
Nariman Point, Mumbai -400021

Whereas in the course of proceedings before me for the assessment year **2007-08** it appears to be that you :-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No. _____ dated _____ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/143(2) of the Income-tax Act, 1961.
No. _____ dated _____.

You are hereby requested to appear before me at **11.30 A.M. on 10.01.2012** and show cause why an order imposing a penalty on you should not be made under Section **271 (1) (c)** of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section **271 (1) (c)**.

5. The learned Counsel for the assessee stated that once inappropriate words were not deleted, the initiation of penalty and



levy of penalty on that basis will not survive. For this, he relied on the decision of Hon'ble Bombay High Court Full Bench in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 125 taxmann.com 253 (Bombay). When these facts were confronted to the learned Sr. DR he could not controvert the above position rather he relied on the penalty order of the Assessing Officer.

6. We have heard the rival contentions and gone through the facts and circumstance of the case. After going through the notice issued for levy of penalty under section 271(1)(c) of the Act i.e. notice under section 274 read with section 271 of the Act dated 28.12.2011, we observe that the Assessing Officer has not specified the charge as decided by Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh (supra), wherein Hon'ble Bombay High court held as under:-

“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 ambiguity. Therefore, Dilip N. Shroff Case (supra) 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



**ITAs No. 1532/Mum/2017 & 187/Mum/2017
Soya Ruchi Industries Ltd.; AY 07-08**

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, section 271(1)(c) is one such provision. With calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling with or dilution. For a further precedential prop, we may refer to Rajesh Kumar v. CIT [2007] 27 SCC 181, in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. 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 Article 14 of the Constitution.*

191. *As a result, we hold that Dilip N. Shroff Case (supra) 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."*

7. As the issue is squarely covered in favour of assessee, respectfully following the Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh (supra), we quash the penalty order and



**ITAs No. 1532/Mum/2017 & 187/Mum/2017
Soya Ruchi Industries Ltd.; AY 07-08**

reverse the order of CIT(A) also. This appeal of assessee is allowed.

8. Coming to Revenue's appeal, since we have already quash the penalty proceedings on jurisdictional issue, we need not go into the merits of the case.

9. **In the result, all the appeal of Revenue is dismissed and the appeal of assessee is allowed.**

Order pronounced in the open court on 31.08.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 31.08.2021.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai