

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 5459/Mum/2019

(निर्धारण वर्ष / Assessment Year 2012-13)

Ashiana Family Trust 13 Vasant Vihar Dr. CG Road, Chembur, Mumbai	बनाम/ Vs.	The Asst. Commissioner of Income Tax, Circle 27(1) 4 th Floor, Tower No.6, Vashi Railway Station Complex Vashi, Navi Mumbai-400 703
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABTA6326J		

अपीलार्थी की ओर से/ Appellant by	:	Dr. P Daniel, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Brajendra Kumar, DR

सुनवाई की तारीख / Date of hearing:	24.06.2021
घोषणा की तारीख / Date of pronouncement:	31.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-24, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-24/ACIT-27(1)/IT-588/45/2018-19 dated 14.06.2019. The assessment was framed by the Dy. Commissioner of Income Tax, Ward 17(2), Mumbai (in short DCIT/ AO) for the A.Y. 2012-13 vide order dated 13.11.2014 under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The penalty was levied by Asst. Commissioner of Income Tax, Circle 27(1), Mumbai under section 271(1)(c) of the Act vide order dated 28.05.2015.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the levy of penalty by the Assessing Officer under section 271(1)(c) of the Act, even though there is defect in the notice issued under section 274 read with section 271(1)(c) of the Act. For this, assessee has raised the following ground No.1: -

"I. The Learned CIT(A)-24 erred in law and on facts of the case in confirming the penalty levied by Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

II. The appellant crave leave to submit additional grounds of appeal, if any, at or before the time of hearing and/ or after, modify, reframe any grounds of appeal at or before the time of hearing."

3. Brief facts are that during the course of assessment proceedings, the Assessing Officer observed that the assessee has claimed long term capital loss of ₹17,34,609/- on sale of debt funds. The Assessing Officer was asked to furnish the relevant details with regard to claim of loss. The Assessing Officer found from the details of the assessee that by oversight it was worked out loss of ₹17,34,609/- instead of ₹2,23,095/-. The Assessing Officer levied the penalty amounting to ₹ 3,11,372/-vide order dated 28.05.2015. The learned Counsel for the assessee stated that in the instant case, the Assessing Officer has initiated the penalty proceedings in terms of notice issued under section 274 read with section 271(1)(c) of the Act dated 13.11.2014 copy of the said notice is filed in assessee's compilation. This issue was also raised before CIT(A) and CIT(A) rejected this ground.

Aggrieved, assessee preferred the appeal before us.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. We also gone through the notice issued under section 274 read with Section 271(1)(c) of the Act dated 13.11.2014 and there is no striking off of inappropriate words or paragraphs, whether the penalty is initiated for concealing the particulars of income or for furnishing of inaccurate particulars of such income. We noted that this issue is now covered by 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) vide order dated 11.03.2021, wherein Hon'ble Bombay High Court observed that defect in notices i.e. not striking off irrelevant portion would vitiate penalty proceedings. The relevant finding of Hon'ble Bombay High court reads 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 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."*

5. We noted that the Hon'ble Bombay High Court has taken cognizance of the decision of CIT v. Smt. Kaushalya [1994] 216 ITR 660 (Bom) and CIT v. Samson Perinchery [2017] 392 ITR 4 (Bom.).

6. Hence, in this case also admittedly, there is no striking off of the irrelevant portion of the notice, the penalty proceedings is vitiated. Hence, we quash the penalty levied by the Assessing Officer under section 271(1)(c) of the Act and reverse the order of Commissioner of Income Tax (Appeals).

7. As the issue is covered by the decision Bombay High Court decision in the case of Mohd. Farhan A. Shaikh (Supra), we delete the penalty and allow the appeal of the assessee.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.08.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(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/ व. निजी सचिव/Sr. Private Secretary/
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai