

**आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में**

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष  
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUER RAHMAN, AM

आयकर अपील सं./ ITA No. 6694/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2007-08)

Rajmata Jijabai Co-op Hsg. Society Ltd. 28, Veena Beena, Gurunank Road, Bandra West, Mumbai-400 050	बनाम/ Vs.	The Income Tax Officer, Ward, Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAAR2683R		

अपीलार्थी की ओर से/ Appellant by	:	Shri M. Subramanian, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Bharat Andhale, DR

सुनवाई की तारीख / Date of hearing:	26.07.2021
घोषणा की तारीख / Date of pronouncement:	26.07.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /

**PER MAHAVIR SINGH, VP:**

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-38, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-38/ITO.15(1)(3)/IT.10814/2014-15 vide dated 24.07.2019. The Assessment was framed by the Income



Tax Officer, Ward 15(1)(3), Mumbai (in short ITO/ AO) for the A.Y. 2007-08 vide order dated 27.12.2010 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalty is levied by ITO, Ward 15(1)(3), Mumbai under section 271(1)(c) vide order dated 26.03.2014.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the Assessing Officer in levying the penalty under section 271(1)(c) of the Act. For this, assessee has raised the following ground No.1:-

*"1. On the facts and in the circumstances of the case and in law the law, the learned Commissioner of Income Tax (Appeals) erred in passing the appeal order on statistical purposes for penalty Rs. 3,98,810/-."*

3. At the outset, it is to be noticed that the assessee has now raised the additional ground that the penalty proceedings initiated are invalid and bad in law and for this, following three grounds are raised: -

*"1. On the facts and in the circumstances of the case & in law, the penalty proceedings initiated vide notice u/s. 271 read with section 274 dated 27-12-2010 is invalid and bad in law.*

*2. On the facts and in the circumstances of the case and in law, the penalty order dated 26-03-2014 levying a*

*penalty of Rs.3,98,810/- passed u/s 271(I)(c) is invalid and bad in law.*

*3. On the facts and in the circumstance of the ease and in law, the learned C.I.T.(Appeals) erred in dismissing the appeal and thereby confirming the penalty levied of Rs.3,98,810/- u/s 271(i)(c) of the act.”*

4. We noted that this is a jurisdictional issue raised by assessee and in term of the decision of Hon’ble Supreme Court in the case of National Thermal Power Co. Ltd. V. CIT 229 ITR 383 (SC), we admit the ground and will adjudicate.

5. We have also gone through the notice issued under section 274 read with Section 271(1)(c) of the Act issued by ITO, Ward 15(1)(3), Mumbai dated 27.12.2010 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 Mohd. Farhan A. Shaikh V. ACIT (2021)434 ITR 1 (Bom), wherein it is held that 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. CIT v. Kaushalya (Smt ) (1995] 216 ITR 660 (Bom)(HC) distinguished Ventura Textiles Ltd. v. CIT [2020] 426 ITR 478 (Bom)(HC) distinguished. Dilip N. Shroff v. JCIT [2007] 291 ITR 519 (SC) followed. 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.

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

Order pronounced in the open court on 26.07.2021.

Sd/-

(एस रिफाउर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 26.07.2021

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 - व .निजी सचिवyraterceS etavirP .rS /

आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai