

**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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. 4636/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 4637/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 4638/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2012-13)

Mr. Ambrish Manoj Dhupelia 12-13, Esplanade, 3 <sup>rd</sup> Floor, 3, A.K. Nayak Marg, Fort, Mumbai-400 001	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Central Circle- 1(1), Old CGO Building, Annexe, 9 <sup>th</sup> Floor, Room No.903, M.K. road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACW1258P		
अपीलार्थी की ओर से/ Appellant by	:	Shri K. Shvram, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Brajendra Kumar, DR

सुनवाई की तारीख / Date of hearing:	14.09.2021
घोषणा की तारीख / Date of pronouncement:	14.09.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /

**PER MAHAVIR SINGH, VP:**

These appeals of the assessee are arising out of orders of the Commissioner of Income Tax (Appeals)-47, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-47/10023/18-19, CIT(A)-47/10015/18-19, CIT(A)-47/10042/18-19, CIT(A)-47/10026/18-19 vide dated 30.05.2019. The Assessments were framed by the Dy.

Commissioner of Income Tax, Central Circle-1, Mumbai (in short DCIT / AO) for the A.Ys. 2010-11 to 2012-13 vide order dated 25.03.2013, 28.10.2013, 27.11.2014 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalties were levied by the Dy. Commissioner of Income Tax Central Circle-1(1), Mumbai under section 271(1)(c) of the Act. vide order dated 14.05.2018, 11.06.2018.

2. The only issue in this appeal of assessee 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. The facts and circumstances are exactly identical in all the Assessment Years i.e. Assessment Years 2010-11 to 2012-13 in ITA No.4636 to 4638/Mum/2019 respectively except quantum and the grounds are also identical. Hence, for the sake of brevity, we will take the facts from Assessment Year 2010-11 in ITA No. 4636/Mum/2019 and decide the issue. The ground No. 1 (e) for Assessment Year 2010-11 in ITA No.4636/Mum/2019 read as under: -

*"1. On the facts and circumstances of the case and in law, the Learned CIT(A)-47, Mumbai erred in confirming the levy of penalty U/s 271(1)(c) r.w. Explanation 1(A) of Rs.93,707/- on addition of notional interest income of Rs.3,03,259/- accruing on alleged deposit of ₹2,34,64,398/- with LGT Bank Liechtenstein in the name of Ambrunova Trust, without appreciating that*

*(e) The Notice U/s 274 dated 25th March, 2013 did not specify the charge for which the penalty proceedings U/s 271(1)(c) had been initiated i.e. for concealment of income or for furnishing inaccurate particulars of income and the penalty is levied without specifying the ground in the Notice, hence, the order passed by A.O. U/s 271(1)(c) is bad in law.”*

3. At the outset, the learned Counsel for the assessee took us through ground raised in regard to the issue of jurisdiction that the AO has initiated penalty for both the limbs i.e. for concealment of particulars of income as well as for furnishing of inaccurate particulars of income. This appeal relates to levy of penalty by the AO under section 271(1)(c) of the Act in respect of interest income received from Ambrunova Trust, Vaduz, amounting to ₹3,03,259/-. The AO levied the penalty for concealment of income and issued notice vide order dated 25.03.2013 under section 274 read with section 271(1)(c) of the Act. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the penalty levied by the Assessing Officer.

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 25.03.2013 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. The facts leading to penalty in respect of interest income for the AYs 2011-12 & 2012-13 are similar to AY 2010-11. Therefore, findings given by us, while sustaining the impugned order in Assessment Year 2010-11 would mutatis mutandis apply to the Assessment Years 2011-12 & 2012-13 as well. For the reason stated above, the appeals of the assessee for Assessment Years 2011-12 & 2012-13 are allowed.

**9. In the Result, all the three appeals of the assessee are allowed.**

Order pronounced in the open court on 14.09.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 14.09.2021

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

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)



**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. PS/  
आयकर अपीलीय अधिकरणमुंबई , / ITAT, Mumbai