

आयकर अपीलीय अधिकरण
मुंबई पीठ "सी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ओम प्रकाश कांत , लक्षा सदस्य का समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
आअसं. 27/मुं/2020 (नि. व. 2012-13)
ITA NO.27/MUM/2020(A.Y.2012-13)

Choice Diamond,
CC-4101, Bharat Diamond Bourse,
Bandra Kurla Complex, Bandra (East),
Mumbai 400 051
PAN: AA AFC-0677-R

..... अपीलार्थी /Appellant

बनाम Vs.

Asstt. Commissioner of Income Tax- 19(1),
203, Matru Mandir, Tardeo,
Mumbai- 400 007

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Dharshiti Shah

प्रतिवादी द्वारा/Respondent by : Shri R.A. Dhyan

सुनवाई की तिथि/ Date of hearing : 18/01/2022

घोषणा की तिथि/ Date of pronouncement : 18/01/2022

आदश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals) -29, Mumbai [in short 'the CIT(A)'] dated 13/12/2019 for the assessment year 2012-13, confirming levy of penalty under section 271(1)(c) of the Income Tax Act, 1961(in short 'the Act').

2. Ms. Dharshti Shah appearing on behalf of the assessee raised a legal ground orally assailing the validity of notice issued under section 274 r.w.s. 271 of the Act dated 30/12/2014. The Id. Authorized Representative for the assessee submitted that aforesaid notice issued by the Assessing Officer is defective as the same has been issued in pre-printed performa without striking off the irrelevant limb of section 271(1)(c) of the Act. The Id. Authorized Representative for the assessee pointed that a perusal of assessment order dated 30/01/2014 passed under section 143(3) of the Act would show that penalty has been initiated under section 271(1)(c) of the Act for concealing the income. However, in the notice both limbs of section 271(1)(c) of the Act i.e. concealed the particulars of income or furnished inaccurate particulars of income are mentioned. Thus, the Assessing Officer has issued notice without application of mind, without specifying the limb under section 271(1)(c) of the Act. The Id. Authorized Representative for the assessee submitted that the Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh vs. DCIT reported as 434 ITR 1 has held that where the notice has been issued in a format without striking off irrelevant matter, the penalty proceedings are vitiated.

3. Shri R.A. Dhyani representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below, as well as, the notice issued under section 274 r.w.s. 271 of the Act. The legal ground raised by the Id. Authorized Representative for the assessee is admitted. A perusal of the said notice reveals that the same has been issued in an omnibus performa without striking

off the limb which is not relevant. In the present case the Assessing Officer has initiated penalty proceedings for concealment of income. However, in the notice we observe both charges under section 271(1)(c) of the Act i.e. concealment of particulars of income or furnishing inaccurate particulars of income are mentioned. The Full Bench of Hon'ble Bombay High Court in the case of Mohd.Farhan A. Shaikh vs. DCIT (supra) has held that the notice issued without striking off irrelevant clause would make the notice ambiguous and hence, defective. Consequently, the entire penalty proceeds would be vitiated. For the sake of completeness the question before the Hon'ble Full Bench and the relevant extract of the decision is reproduced herein under:

“Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitate 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 section 271(1)(c), read with section 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.”*

Thus, in the facts of the case and in the light of decision of Hon'ble Bombay High Court (supra), we hold that the notice issued under section 274 r.w.s. 271 of the Act is defective, hence, the subsequent penalty proceedings arising therefrom are vitiated.

5. In the result, the impugned order is quashed and appeal of the assessee is allowed.

Order pronounced in the open court on Tuesday the 18th day of January, 2022.

Sd/-

(OM PRAKASH KANT)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 18/01/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai