

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI C.N.PRASAD, JUDICIAL MEMBER
AND
SHRI P.K.KEDIA, ACCOUNTANT MEMBER**

**I.T.A No. 5134/Del/2017, A.Y. 2007-08
I.T.A No. 5135/Del/2017, A.Y. 2008-09
I.T.A No. 5136/Del/2017, A.Y. 2009-10
I.T.A No. 5137/Del/2017, A.Y. 2010-11
I.T.A No. 5138/Del/2017, A.Y. 2011-12
I.T.A No. 5139/Del/2017, A.Y. 2012-13**

M/s. Umesh Pharmaceuticals Pvt. Ltd. C-30, Panchsheel Enclave New Delhi-110017	Vs	ACIT, Central Circle-06 New Delhi
PAN : AAACU7237L		
(Appellant)		(Respondent)

Appellant By	Sh. P.C.Yadav, Adv.
Respondent by	Shri H.K.Chaudhary, CIT(DR)

Date of Hearing	23.12.2021
Date of Pronouncement	08.02.2022

ORDER

PER C.N.PRASAD, J.M. :

All these appeals are filed by the assessee against the different orders of the Ld. Commissioner of Income Tax (Appeals)-24, New Delhi for the assessment years 2007-08 to 2012-13 in sustaining the penalty levied u/s 271(1)(c) of the I.T Act. In all these appeals, assessee filed following additional grounds of appeal :

“ a) On the facts and under the circumstances of the case the penalty levied under section 271(1)(c) of the Act is void as the notice u/s 274 Read with Sec. 271 is bad and defective as it is issued without deleting the appropriate clause under which the penalty is proposed to be imposed is either for filling of inaccurate particular of income or concealment of particular of income and as such the notice is not sustainable and not curable.”

2. The Ld. Counsel for the assessee submits that additional ground is purely illegal ground and thus the said additional ground be admitted and adjudicated. Reliance was placed on the decision of the Hon’ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT reported in 229 ITR 383 (SC) and CIT vs. Varas International reported in 284 ITR 80 (SC). On the other hand, the Ld. DR submits that this ground was not raised before the Assessing Officer or before the Ld. CIT(A) but was raised for the first time before this Tribunal.

3. On hearing both the parties, we find that additional ground raised by the assessee is purely illegal and no verification of facts are required by the Assessing Officer.

4. The Ld. Counsel submits that in all these appeals additional ground was raised contending that penalty order is bad in law as the penalty proceedings were initiated and penalty was levied without specifying the exact limb of Section 271(1)(c) of the Act. The Ld. Counsel for the assessee referring to the penalty

notices issued u/s 274 read with section 271(1)(c) of the IT Act which are placed in the paper book submitted that notices were issued mechanically stating that assessee has concealed particulars of income or furnished inaccurate particulars of such income. In other words, the notices were issued for both the limbs without strike off irrelevant limb and specifying the charge for which the notices were issued. Therefore, the Ld. Counsel for the assessee submits that since the notices were issued without specifying the charge for which they were issued the penalty proceedings initiated were bad in law and consequently levy of penalty u/s 271(1)(c) cannot be sustained. Reliance was placed on the following decisions :

(1) Radhika Surgical Pvt. Ltd. vs. ACIT, ITA No. 5090, 5091, 5092 / Del/2017 dated 17/02/2021.

(2) Radhika Surgical Pvt. Ltd. Vs. ACIT, ITA No. 5088/Del/2017 dated 21.01.2021.

(3) M/s. Akhil Meditech Pvt. Ltd. Vs. ACIT, ITA No. 5118 to 5121/Del/2017 dated 19.10.2020.

(4) M/s. Glory Lifesciences Pvt. Ltd. vs. ACIT, ITA No. 5128 to 5131/Del/2017, dated 06.04.2021.

5. Referring to the above judgments, Ld. Counsel for the assessee submitted that since the notice issued u/s 274 read with section 271(1)(c) of the Act did not specify the limb for which or the charge for which it was issued the penalty order passed pursuant to such notice is bad in law. The Ld. Counsel for the assessee further submitted that search was conducted in Rockland Group and as a result of which proceedings u/s 153A was framed by the Assessing officer on the assessee. The Ld. Counsel submits that identical issue came up in Rockland cases are the

Tribunal deleted the penalty levied u/s 271(1)(c) of the Act as the Assessing officer filed to specify the charge for which the notices for issued and one of the group cases was Radhika Surgical Pvt. Ltd. vs. ACIT and the Tribunal by order dated 17.2.2021 deleted the penalty. On the other hand, the Ld. DR referring to the assessment order submits that the penalty was levied for the concealment of income which is clearly spelt out in the assessment order.

6. Heard rival submissions perused the orders of the authorities below and the decisions relied on. On perusal of the notices issued u/s 274 read with section 271(1)(c) of the Act we observe that the notices were all stereotyped and the Assessing officer has not specified any limb or charge for which the notices were issued i.e., either for concealment of particulars of income or furnishing of inaccurate particulars of such income. It can be seen from the notices issued u/s 274 read with section 271(1)(c) of the Act, Assessing Officer did not strike off irrelevant limb in the notices specifying the charge for which notices were issued. All the notices for issued are apparently for both the charges.

7. We have perused the orders of the Tribunal in the case of Radhika Surgical Pvt. Ltd. vs. ACIT (supra) which is the assessee's group case and find that the Tribunal deleted the penalty on identical facts as the notices issued u/s 271(1)(c) were found to be bad in law as no charge was specified in those notices. We also observed that identical issue came up before the Hon'ble Bombay High Court (full

bench at Goa) case of Mr. Mohd. Farhan A. Shaikh vs. ACIT [434 ITR (1)] and the Hon'ble Jurisdictional High Court held as 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(l)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiate the penalty proceedings?

181. It does. The primary burden ties 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(l)(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.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushaiya does not lay down the correct proposition of law.

Question No.2: Has Kaushaiya failed to discuss the aspect of

'prejudice?

184. Indeed, Kaushaiya did discuss the aspect of prejudice. As we have already noted, Kaushaiya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushaiya, "fully knew in detail the exact charge of the Revenue against him". For Kaushaiya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, "the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went onto observe that for sustaining the plea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Kaushaiya does the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done ",

185. No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under section 274. So asserts Kaushaiya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.

186. That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers. Kaushaiya's insistence that the previous proceedings supply justification and cure the defect in penalty proceedings has not met our acceptance.

Question No. 3: What is the effect of the Supreme Court's decision in Dilip N. Shroff on the issue of non-application of mind when the irrelevant portions of the printed notices are

not struck off ?

187. In DUip N. Shroff, for the Supreme Court, it is of "some significance that in the standard Pro-forma used by the assessing officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done". Then, Dilip N. Shroff, on facts, has felt that the assessing officer himself was not sure whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars.

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 disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays nonapplication 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(l)(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[74], in which the Apex Court has quoted with approval its earlier judgment in *State of Orissa v. Dr. Binapani Dei*[75]. 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 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.

Conclusion: We have, thus, answered the reference as required by us; so we direct the Registry to place these two Tax Appeals before the Division Bench concerned for further adjudication."

8. As could be seen from the above the Hon'ble Bombay High Court (Full Bench at Goa) in the case of *Mr. Mohd. Farhan A. Shaikh v. ACIT* [(2021) 434 ITR 1 (Bom)] while dealing with the issue of non-strike off of the irrelevant part in the notice issued u/s.271(l)(c) of the Act, held that assessee must be informed of the grounds of the penalty proceedings only through statutory notice and an omnibus notice suffers from the vice of vagueness.

9. Ratio of this full bench decision of the Hon'ble Bombay High Court (Goa) squarely applies to the facts of the assessee's case as the notices u/s. 274 r.w.s. 271(l)(c) of the Act

were issued without striking off the irrelevant portion of the limb and failed to intimate the assessee the relevant limb and charge for which the notices were issued. Thus, respectfully following the said decision we hold that the penalty order passed u/s. 271(l)(c) of the Act by the Assessing Officer is bad in law and accordingly the penalty orders passed u/s. 271(l)(c) of the Act for Assessment Years 2007-08 to 2012-13 are quashed. As we have decided the additional ground in favour of the assessee and quashed the penalty orders the other grounds raised by the assessee on merits are not gone into as the adjudication of these grounds become only academic at this stage.

10. In the result, appeals of the assessee are allowed as indicated above.

Order pronounced in the Open Court on this 8th Day of February, 2022 in presence of both the parties.

Sd/-

(P.K.KEDIA)

ACCOUNTANT MEMBER

** Binitia**

Sd/-

(C.N.PRASAD)

JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT concerned Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar, ITAT Delhi Benches: