

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3298/Mum/2016  
(A.Y: 2006-07)

M/s.Trioka Estate Pvt Ltd.Citi Mall, 2 <sup>nd</sup> New Link Road, Andheri (W), Mumbai – 400053.	Vs.	DCIT – 2(3) Aayakar Bhavan, M.K.Road, Mumbai – 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AA ACT5759N		
Appellant	..	Respondent

Appellant by :	Mr.Nitesh Joshi. AR
Respondent by :	Mr.V.Tripathi. DR

Date of Hearing	13.01.2022
Date of Pronouncement	18.01.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-6, Mumbai passed u/s 271(1)(c) and 250 of the Act. The assessee has raised the following grounds of appeal.

- 1. The Ld. CIT(A) has erred in confirming the levy of penalty u/s 271(1)(c) of the Act of Rs. 1,51,47,401/- (penalty amount shall modify to the extent of relief granted by Hon'ble ITAT in quantum appeal in respect of value of the property as on 01.04.1981). On the facts and circumstances of the case and in law, the penalty levied out to be deleted.*

1.1 At the time of hearing, the assessee has raised the additional ground of appeal as under:

*“1. That the notice dated 26.12.2008 issued by AO u/s 274 r.w.s 271 of the Act does not meet with the jurisdictional pre-conditions, rendering the initiation of penalty proceedings and consequently the penalty order to be illegal and bad in law.*

*2. That the AO was not justified in levying penalty u/s 271(1)(c) of the Act as he himself is not clear whether such penalty is levied for concealment of income or for furnishing of inaccurate particulars of income.”*

1.2 The Ld. AR submitted that the additional grounds of appeal are on the legal & jurisdictional issue. The Assessing Officer (A.O) is not clear in his action whether the penalty is levied for concealment of income or furnishing inaccurate particulars of income. After hearing the submissions of the Ld.AR and the Ld.DR, the additional ground of appeal is admitted. Whereas, the Ld.AR has restricted his arguments to the extent of additional grounds of appeal only and supported with the judicial decisions.

2. The Brief facts of the case are that the assessee company is engaged in the business of trading of steel items. The assessee has filed the return of income for the A.Y 2006-07 on 29.11.2016 with a total income of Rs.16,08,720/- and the return of income was

processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued. The A.O in the assessment proceedings found that there is difference in computation of Long term Capital gains and the cost of improvement is not supported with the evidences. The A.O. has finally assessed the total income of Rs.4,17,90,390/- and passed the order u/s 143(3) of the Act dated 26-12-2008.

3. Subsequently, the A.O has initiated penalty proceedings u/s 271(1)(c) of the Act, in the penalty proceedings the A.O has considered the findings of the scrutiny assessment and the explanations of the assessee referred in the penalty order. But the A.O was not satisfied with the explanations and levied the penalty and passed the order u/s 271(1)(c) of the Act dated 28.03.2014.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the assessee has filed the submissions. Whereas the CIT(A) was not satisfied with the submissions and confirmed the penalty levied by the

Assessing officer and dismissed the appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld.AR of the assessee submitted that the assessee has cooperated in submitting the information before the A.O. Further the notice issued for levy of penalty is invalid and relied on the judicial decisions and the paper book and prayed for allowing the appeal.

6. Contra, the Ld.DR submitted that the CIT(A) has rightly confirmed the penalty though technicalities raised by the assessee in the additional grounds of appeal are devoid of merits and prayed for dismissal of the assessee appeal.

7. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue is that the assessee has challenged the levy of penalty on legal issue as the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of in accurate particulars of income. The Ld.AR demonstrated the copy of penalty notice in the

paper book at page 90 and the submissions are realistic. We find the Jurisdictional Honble High Court of Bombay in Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.2021. (2021) 125. taxmann.com 253 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under;

*180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice – and that prevention takes just a tick mark. Prudence demands prevention is better than cure.*

*Answers:*

*Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate 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 Sec. 271(1)(c), r.w.s. 274 of the 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 deferent 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.*

8. We have considered the facts, circumstances and ratio of the decision of Honble High Court and are of the view that in the present case the A.O has not has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. Accordingly, we set aside the order of the CIT(A) and quash the penalty notice. And allow the grounds of appeal in favour of the assessee.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 18.01.2022.

Sd/-

(PRASHANT MAHARISHI)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 18.01.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai