

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F', NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

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| ITA No.1475/Del/2019 | Assessment Year: 2003-04 |
| ITA No.1563/Del/2019 | Assessment Year: 2004-05 |
| ITA No.1287/Del/2019 | Assessment Year: 2007-08 |
| ITA No.1288/Del/2019 | Assessment Year: 2008-09 |

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| Gopal Kumar Goyal, House No. 436, Civil Lines, Gurgaon-122001 | Vs. | DCIT, Central Circle-14, New Delhi. |
| PAN :AEFPG8370J | | |
| (Appellant) | | (Respondent) |

ITA No.1919/Del/2019
Assessment Year: 2004-05

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| DCIT, Central Circle-14, New Delhi. | Vs. | Gopal Kumar Goyal, House No. 436, Civil Lines, Gurgaon-122001 |
| PAN :AEFPG8370J | | |
| (Appellant) | | (Respondent) |

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| ITA No.1289/Del/2019 | Assessment Year: 2007-08 |
| ITA No.1290/Del/2019 | Assessment Year: 2008-09 |

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| Kanta Rani Gauba, House No. 29, Sector-15, Gurgaon-122001 | Vs. | DCIT, Central Circle-14, New Delhi. |
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| PAN :AHHPR5061L | | |
| (Appellant) | | (Respondent) |

ITA No.1094/Del/2019
Assessment Year: 2007-08

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| Akdant Buildcon (P) Ltd., Flat No. 4, R.R. Apartment, 3-4, Manglapuri, Mehrauli, New Delhi-1100 30 | Vs. | DCIT, Central Circle-14, New Delhi. |
| PAN :AAFCA8996F | | |
| (Appellant) | | (Respondent) |

ITA No.1285/Del/2019
Assessment Year: 2007-08

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| Shri Gaurav Gaub, H.No. 29, Sector-15, Part-1, Gurgaon (Hr.) | Vs. | DCIT, Central Circle-14, New Delhi. |
| PAN :AIZPG2182J | | |
| (Appellant) | | (Respondent) |

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| Appellant by | S/Shri Gautam Jain & Lalit Mohan, Adv. |
| Respondent by | Shri T. Kipgen, CIT (DR) |

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| Date of hearing | 16.03.2022 |
| Date of pronouncement | 30.03.2022 |

ORDER

PER BENCH:

This is a group of nine appeals, filed by the different assessees for assessment years 2003-04, 2004-05, 2007-08, 2008-09.

2. Before us, at the outset, learned authorized representative submitted that though these appeals are of different assesseees and for different assessment years, but the issues involved in all these appeals are identical and, therefore, he has common submissions to make. It was further submitted that the submissions made by him while arguing one appeal would be applicable to other appeals also.

3. Learned Departmental Representative did not controvert the aforesaid submissions made by the learned authorized representative.

4. We, therefore, for the sake of convenience, proceed to dispose of all the appeals by a consolidated order but, however, proceed with narrating the facts for assessment years 2003-04 in ITA No.1475/Del/2019.

5. Before us, learned authorized representative submitted that in the present case, the assessment was framed vide order dated 21.03.2013 under Section 144 read with section 153A of the Income-Tax Act, 1961, consequent upon order dated 15.03.2013 passed under Section 264 of the Act by Commissioner of Income-Tax(Appeals), determining the total income at Rs.6,01,916 by inter alia making addition at Rs.1,01,916 on account of unexplained cash payments & Rs.5 lacs on account of estimated income.

6. Aggrieved by the above addition made by the Assessing Officer, assessee carried the matter before the learned Commissioner of Income-Tax (Appeals) who deleted substantial additions and upheld the additions to the extent of Rs.1,01,916 as against the total addition of Rs.6,01,916 made by Assessing Officer. On the addition that were upheld by learned Commissioner of Income-Tax (Appeals). Assessing Officer vide penalty order passed under Section 271(1)(c) of the Income-Tax Act, 1961 read with section 274 of the Act, order dated 31.03.2017 levied a penalty of Rs.1,30,725.

7. Aggrieved by the penalty order passed by the Assessing Officer, assessee carried the matter before the learned Commissioner of Income-Tax who vide order dated 17th December 2018 in Appeal No.10103/17-18, upheld the levy of penalty imposed by Assessing Officer.

8. Aggrieved by the order of learned Commissioner of Income-Tax, assessee is in appeal and is challenging the levy of penalty under Section 271(1)(c) of the Act.

9. Before us, learned authorized representative pointed to the notice issued by the Assessing Officer under Section 274 read with section 271(1)(c) of the Act dated 15.03.2013 which is placed at page 17 of the paper book, wherein the Assessing Officer has

mentioned “have concealed the particulars of your income...furnished inaccurate particulars of income”. He, therefore, submitted that the Assessing Officer was not sure as to for which limb of section 271(1)(c) of the Act, penalty has been initiated i.e. whether it is for concealment of income or for furnishing of inaccurate particulars of income. He, therefore, relying on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd.(2021) 432 ITR 84 submitted that the show-cause-notice issued by the Assessing Officer were illegal and bad in law and, therefore, liable to be quashed. He also placed reliance on the decision of Hon'ble Bombay High Court in the case of Mohd. Farhan A Sheikh Vs. DCIT (2021) 434 ITR 1 (Bom)(FB) for the proposition that when in the notice which was in printed form & the inapplicable portions was not deleted, the notice was not valid.

10. Learned Authorized Representative, thereafter submitted that similar notices have been issued by the Assessing Officer in all the present appeals. He, therefore, relying on the decision of Sahara India life (supra) & Mohd. Farhan (supra) submitted that the penalty is not leviable in any of the assessment years in the case of the assesseees.

11. Learned Departmental Representative, on the other hand, did not controvert the submissions made by the learned authorized representative but, however, submitted that the levy of penalty has to be seen after considering overall conduct of the assessee. He, thus, supported the orders of the lower authorities.

12. We have considered the rival submissions and perused the material available on record. The issue in the present ground is with respect to levy of penalty under Section 271(1)(c) of the Act.

13. In the present appeal, the show-cause-notice dated 15.03.2013 which has been issued by the Assessing Officer under Section 274 read with section 271(1)(c) of the Act reveals that Assessing Officer has not recorded any clear cut satisfaction as to whether the penalty under Section 271(1)(c) of the Act has been levied for concealment of income or for furnishing of inaccurate particulars of income.

14. We find that Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Del.), after considering the decision in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar) & CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar) [where the SLP filed by Revenue was dismissed and reported in (2016) 386 ITR (ST) 13 (SC)]

has held that penalty under Section 271(1)(c) was not leviable when the notice issued by Assessing Officer did not specify as to whether the proceedings were initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income. The relevant portion of the findings of Hon'ble High Court in the case of Sahara India Life Insurance Co. Ltd. (supra) read as under:

“21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT vs. Manjunatha Cotton & Ginning Factory 359 565 (Kar) and observed that the notice issued by the Assessing Officer would be bad in law if it did not specify which limb of Section 271(1)(c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in CIT vs. SSA’s Emerald Meadows (2016) 73 Taxman.com 241 (Kar.), the appeal against which was dismissed by the Hon'ble Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016.

22. On this issue again this court is unable to find any error having been committed by the ITAT. No substantial question of law arises.”

15. We further find that Hon'ble Bombay High Court in the case of Mohd. Farhan Sheikh (supra) after considering various decisions, cited therein, has held that notice in printed form without deleting inapplicable portions is not valid. The relevant observations of Hon'ble High Court is are under:

“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 Dlip N. Shroff, for the Supreme Court, it is of “some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the some postulates that inappropriate words & paragraphs were to be deleted, but the same had not been done.” Then, Dilip N. Shroff, on the facts, has felt that the Assessing Officer himself was not sure whether he had proceeded on the basis that the assessee has 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 non-application of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

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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.”

16. Before us, Revenue has not placed any material to demonstrate that the aforesaid decision of Hon'ble Delhi High Court

in the case of Sahara India Life Insurance Co. Ltd. (supra) and the decision of Hon'ble Bombay High Court in the case of Mohd. Farhan Sheikh (supra) has been stayed/set aside/overruled by higher judicial forum. Further, Revenue has also not placed on record any contrary binding decision in its support. We, therefore, following the aforesaid decision in the case of Sahara India Life Insurance Co. Ltd. (supra), & and decision of Hon'ble Bombay High Court in the case of Mohd. Farhan (supra) are of the view that the Assessing Officer was not justified in levying penalty under Section 271(1)(c) of the Act. We accordingly set aside the levy of penalty levied by Assessing Officer and that was confirmed by the learned Commissioner of Income-Tax (Appeals).

17. **Thus, the appeal of the Assessee is allowed.**

18. As far as other appeals are concerned, since, it has been admitted by both the parties that the facts and circumstances in all the present cases are identical, therefore, for the reasoning as given, hereinabove, while deciding the appeal in ITA No. 1475/Del/2019 and for similar reasons, hold that no penalty could be levied against the assesseees. **Thus, the appeals of the assesseees are allowed.**

19. In the result, all the appeals of Assessees are allowed.

Order pronounced in the open court on 30th March, 2022

Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 30th March, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

| Sl. No. | Particulars | Date |
|----------------|--|-------------|
| 1. | Date of dictation (Order drafted through Dragon software): | 16.03.2022 |
| 2. | Date on which the draft of order is placed before the Dictating Member: | |
| 3. | Date on which the draft of order is placed before the other Member: | 16.03.2022 |
| 4. | Date on which the approved draft of order comes to the Sr. PS/PS: | 16.03.2022 |
| 5. | Date of which the fair order is placed before the Dictating Member for pronouncement: | 18.03.2022 |
| 6. | Date on which the final order received after having been signed/pronounced by the Members: | 30.03.2022 |
| 7. | Date on which the final order is uploaded on the website of ITAT: | |
| 8. | Date on which the file goes to the Bench Clerk | 30.03.2022 |
| 9. | Date on which files goes to the Head Clerk: | |
| 10. | Date on which file goes to the Assistant Registrar for signature on the order: | |
| 11. | Date of dispatch of order: | |