

IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 5828/MUM/2019  
(ASSESSMENT YEAR: 2014-15)

Mrs. Kavita D. Gupta,  
C-21-28, Gokul Arcade, Garware,  
Vile Parle (East),  
Mumbai - 400057  
[PAN: ADNPG9978M]

.....

**Appellant**

Assistant Commissioner of Income Tax-  
26(2), Mumbai,  
Pratyaksha Kar Bhavan,  
Bandra Kulra Complex, Bandra (East),  
Mumbai - 400051

**Vs**

.....

**Respondent**

Appearances

For the Respondent/ Assessee : Shri Sameer Dalal (AR)  
For the Appellant/Department : Shri Tejinder Pal Singh Anand (DR)

Date of conclusion of hearing : 16.02.2022  
Date of pronouncement of order : 30.03.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 29.03.2019, passed by the Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as 'the CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in appeal [CIT(A)-38/ACIT-26(2)/IT-10070/2017-18] for the Assessment Year 2014-15, whereby the CIT(A) had dismissed the appeal filed by the Assessee against the order, dated 26.12.2016, passed under Section 271(1)(c) of the Act levying penalty of INR 2,90,287/-.

2. The Appellant has raised the following grounds of appeal:

*“1.1 The learned Commissioner of Income Tax (Appeals)-38 Mumbai [‘the Id. CIT(A)’] erred in confirming the penalty of Rs. 2,90,287/- levied by the Assessing Officer (‘the A.O.’) under section 271(1)(c) of the Income Tax Act, 1961.*

*1.2 While doing so, the Id. CIT(A) failed to appreciate that:*

*a. the A.O. passed the penalty order under section 271(1)(c) of the Act without affording sufficient, proper and adequate opportunity of being heard to the Appellant.*

*b. the Appellant’s claim of deduction under section 57 of the Act of Rs. 9.39 lakhs being interest paid to City Bank was a bonafide/genuine claim;*

*c. in the notice issued under section 274 read with section 271(1)(c) of the Act as well as penalty order, the charge for which penalty under section 271(1)(c) of the Act has been levied, is not specified and both the limbs of charge are mentioned there that is, ‘concealment of income and ‘furnishing of inaccurate particulars of income.*

*1.3 The Appellant submits that in the facts and circumstances of the case and in law no such penalty is livable.*

*1.4 The Appellant prays that penalty of Rs. 2,90,287/- levied under section 271(1)(c) of the Act be cancelled.”*

3. The relevant facts, in brief, are that the Appellant is an individual who had salary income, income from house property, business income from trading activity, as well as income from other sources during the previous year 2016-17 relevant to the Assessment Year 2017-18 and filed return of income which was picked up for detailed scrutiny. The

Assessing Officer (hereinafter referred to as 'the AO') completed assessment under Section 143(3) of the Act vide order dated 26.12.2016 after making disallowance of interest of INR 9,39,442/- claimed by the Appellant. Penalty proceedings were also initiated against the Appellant and notice, dated 26.12.2016 was issued to the Appellant under Section 274 read with Section 271 of the Act.

4. In the penalty proceedings, the explanation provided by the Appellant was rejected by the AO and a penalty of INR 2,90,287/- was levied under Section 271(1)(c) of the Act. The aforesaid penalty was confirmed by the CIT(A) by the order impugned in the present appeal.
5. Before us, the Ld. Authorized Representative of the Appellant submitted that the Appellant had made relevant disclosure in the return of income. Since the claim for deduction of expenses under Section 57 was on account of bonafide belief, this was not a fit case for levying penalty. He further submitted that, in any case, the issue in the present appeal is covered in favour of the Appellant by the judgment of the Hon'ble Bombay High Court in the case of **Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum** reported in **434 ITR 1 (Bombay)**, as the penalty notice, dated 26.12.2016, has been issued without deleting or striking off inapplicable part. While the Ld. Departmental Representative relied upon the penalty order to support his case, he fairly acknowledged the fact that the penalty notice has been issued under Section 271 read with 274 of the Act without deleting or striking off inapplicable part.
6. We have heard the parties, perused the record and considered legal position. The full Bench of the Hon'ble Bombay High Court in the case **Mohd. Farhan A Shaikh Vs. DCIT (supra)** has held that a mere defect in the notice - not striking off the irrelevant matter, would vitiate the

penalty proceedings. The relevant extract of the aforesaid judgment reads as under:

*“Answers:*

*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—vitiating 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.”  
(Emphasis supplied)*

7. A perusal of the penalty notice, dated 26.12.2016, issued under Section 274 read with 271 of the Act would show that it in an omnibus show cause notice issued without deleting or striking off the inapplicable part.
8. Similarly, the Assessment Order, dated 26.12.2016, is also vague as it states that “*Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 are initiated separately for concealing and furnishing inaccurate particulars of income.*”

9. Same is the case with the penalty order, dated 23.06.2017, passed under Section 271(1)(c) of the Act, as it also does not state under which limb of Section 271(1)(c) of the Act penalty has been levied. Paragraph 6 of the aforesaid penalty order reads as under:

*“6. In view of the above discussion, the contentions of the assessee are not accepted and it is held that assessee has furnished inaccurate particulars and concealed income within the meaning of sec. 271(1)(c) of the Act and explanation offered by him is not bonafide and is incorrect and false on facts. Therefore, the assessee is held liable for levy of penalty u/s 271(1)(c) of the Act. Accordingly, the assessee has furnished inaccurate particulars or concealed income of Rs.9,39,442/- .....” (Emphasis supplied)*

10. In view of the above, Ground No. 1.1, 1.2.c. and 1.4 are allowed following the Full Bench decision of the Hon'ble jurisdictional High Court in case of Mohammed Farhan A Shaikh vs DCIT (supra). The penalty proceedings stand vitiated on account of defect in the penalty notice dated 26.12.2016. Accordingly, penalty order, dated 23.06.2017, is set aside as being invalid and without jurisdiction.
11. Since, we have decided the Ground No. 1.1, 1.2.c. and 1.4 as above, the need to adjudicate Ground No. 1.2.a. 1.2.b. and 1.3 does not arise.
12. In result, appeal filed by the Assessee is allowed as indicated herein above.

Order pronounced on 30.03.2022.

*Sd/-*  
(Pramod Kumar)  
Vice President

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30/03/2022  
Alindra, PS

**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 /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai