

**IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI**

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER & SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

**I.T.A. No. 123/PAN/2018
Assessment Year: 2001-02**

**I.T.A. No. 124/PAN/2018
Assessment Year: 2002-03**

**I.T.A. No. 125/PAN/2018
Assessment Year: 2003-04**

**I.T.A. No. 126/PAN/2018
Assessment Year: 2004-05**

M/s. Nirani Sugars Ltd. Kulaki Cross Mudhol Dist. Bagalkot [PAN: AABCN 2166 J] (Appellant)	Vs.	Assistant Commissioner of Income Tax, Central Circle-2, Belgaum (Respondent)
---	------------	--

Appellant by	Shri Ashok Kulkarni, Advocate
Respondent by	Smt. Rijula Uniyal, Sr. D/R

Date of Hearing	29.03.2022
Date of Pronouncement	01.04.2022

ORDER

Per Bench:

These captioned appeals are filed against the order of the Learned Commissioner of Income Tax (Appeals) - Belagavi, [hereinafter the "Id. CIT(A)] passed u/s 250 of the Act (hereinafter the "Act") even dt. 24/01/2018, for the Assessment Years 2001-02, 2002-03, 2003-04, 2004-05.

2. At the outset, the Id. Counsel for the assessee submitted that there was a delay of 30 days in filing of these appeals before the Id. CIT(A). The assessee had filed an affidavit stating the reasons for the delay in filing of these appeals but the Id. CIT(A) without taking cognizance of the same, did not admit these appeals and dismissed them as such.

3. Aggrieved the assessee is in appeal before us.

4. The assessee has placed on record, the reasons for delay in filing of the appeals as stated before the Id. CIT(A), which is extracted for ready reference:-

"The above mentioned appeals are pending before your Honours. There is a delay of 30 days in filing these appeals.

2. I wish to inform you that I am a senior partner in M/s. Shivangi and Latkar, Chartered Accountants, No. 1521, Eagle Heights, Maruti Galli, BELAGAVI – 590 001. As a senior partner, I am responsible for firm's professional work such as Audit of Accounts, filing of returns under the direct and indirect taxes, Appeals and allocating office work amongst our colleges and supervision of the office work.

3. I wish to inform you that M/s. Nirani Sugars Ltd., Mudhol, is one of our clients. Our office had received orders levying penalty u/s 271(1)(c) of the Act for the Assessment Years 2001-02 to 2004-05 from M/s. Nirani Sugars Ltd., Mudhol. I had instructed Shri Deepak Kulkarni to forward the penalty order to M/s. K.R. Prasad, Advocates, to prepare the Appeal Memos. On my instructions, Shri Deepak Kulkarni was taking steps.

4. It is to be stated that I had a cardiac problem in the month of July/August 2014. I underwent Angiogram in KLE Hospital, Belagavi. I was advised 'bed-rest' and I was not attending to office work. Eventually, on the advice of my doctors I went to U.S. in the last week of November 2014. Due to my heart problem and on account of my absence in the office, I could not issue appropriate instructions for filing the appeal. Consequently, there is a delay of 30 days in filing the appeal.

5. I wish to inform you that, I am practicing as a Chartered Accountant for 48 years. In my carrier, there are hardly any lapses. Perhaps, but for my heart problem, there would not have been any delay in filing the said appeals. In these circumstances, I request you to kindly condone the delay of 30 days in filing the appeal. Your Honours will certainly appreciate that; the assessee / appellant should not be put to hardship because of my health problems. I reiterate that the delay in filing the appeal is not on account of negligence or carelessness on the part of the appellant.

Further we find that the Id. Counsel for the assessee has placed on record an affidavit filed by the Director of the assessee company, to the effect that the assessee company was aware of the proceedings and developments in the case. The affidavit is extracted for ready reference:-

"I Kamala Nirani, Wife of Shri. Murugesh R. Nirani, aged about 48 years, residing at 166, Kulali Cross, Jamkhandi Road, Mudhol - 587313, Dist: Bagalkot, Karnataka, do solemnly affirm and state on oath as under:

1. I am the Director of the appellant company and I am well conversant with the facts and the circumstances of the case. I am competent to swear to this affidavit.

2. I state that on 12.09.2014 the appellant company received the order levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 relating to AY's: 2001-02, 2002-03, 2003-04 and 2004-05. I further state that immediately on receipt of the said penalty orders, I had instructed Mr. Deepak Kulkarni working in the office of our company Chartered Accountants, M/s. Shivoangi and Latkar having their office at Eagle Heights, No. 1521, Second Floor, Maruti Galli, Belagavi. I state that after consulting M/S. K.R. Prasad, Advocates, Bengaluru, the appeal memo's were prepared and sent to us for signature.

3. I state that appeal memo's were duly signed on 20.09.2014 and given to Mr. Deepak Kulkarni for the purpose of filing before the Commissioner of Income Tax (Appeals), Bengaluru. I understand the appeals were filed on 12.11.2014 before the Commissioner of Income Tax (Appeals), Bengaluru.

4. I state that there is a delay of 30 days in filing the appeals. I state that there is absolutely no negligence on the part of the appellant company in filing the appeal. The appellant company took all due diligence to file the appeal in time.

5. What is stated above is true to the best of my knowledge, information and belief."

5. The Id. AR of the assessee further submits that assessee has very good case on merit and is likely to succeed in case the assessee is given opportunity to contest the appeal on merit.

6. On the other hand, the Id. Departmental Representative (DR) for the revenue supported the order of Id. CIT(A). She submitted that the assessee failed to explain the delay before the Id. CIT(A), thereby the delay was not condoned in filing of the appeals and resultantly the appeals were not admitted.

7. After hearing the rival contentions, perusing the material available on record as well as the orders of the authorities below, we hold as follows:-

8. A plain reading of the reasons for the delay before the Id. CIT(A) shows that the assessee was suffering from cardiac problem in the month of July/August 2014. He underwent Angiogram in KLE Hospital, Belagavi and was advised 'bed-rest'. Eventually, on the advice of his doctors the Authorized Representative of the assessee went to U.S. in the last week of November 2014. Due to his heart ailment and on account of his absence in the office, he could not issue appropriate instructions for

filing the appeal resulting in a delay of 30 days in filing the appeal. This is a case of non-deliberate delay and not one of gross negligence.

9. The Hon'ble Apex Court in *Collector, Land Acquisition vs. Mst. Katji & Ors* [1987] 167 ITR 0471 (SC), held that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, the other side cannot claim to have vested right in injustice being done because non-deliberate delay. There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on a *malafide*. The litigation does not stand to benefit by resorting to delay, in fact he is on serious risk.

The Hon'ble Supreme Court in *Vedabai Aoiias Vaijayanatabai Baburao Patil vs. Shantaram Baburao Patil* [2002] 122 Taxman 114 (SC) held that the Court should adopt pragmatic approach. The distinction must be made between a case where there is inordinate and a case where the delay is of a few days. In the former case, the consideration of prejudice to the other party will be a relevant factor so the case call for more cautious approach but in the later case no such consideration may arise and such a case deserves a liberal approach, no hard and fast rule can be laid down in this regard. The court has to exercise the discretion of the facts of each keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance.

10. We are of the opinion that the assessee was prevented by sufficient cause in filing the appeals in time before the Id. CIT(A) and the intention of the assessee was not *malafide*. The contention of the Id. Counsel for the assessee that due to serious health ailments it missed the deadline of filing the appeals before the Id. CIT(A) by way of filing an affidavit (which is placed on record), could not be controverted by the Id. D/R. Hence we deem it fit to condone the delay of 30 days in filing of these appeals before the Id. CIT(A) and admit this appeals for hearing on merits.

11. On merits, the sole issue raised by the ld. Counsel for the assessee in all these appeals is the preliminary objection challenging the penalty imposed u/s 271(1)(c) on the ground that the notice issued initiating the penalty proceedings being defective, the penalty imposed in pursuance of such defective notice is not sustainable in law. He has placed on record, a copy of the said notices issued by the A.O. u/s 271(1)(C) of the Act, even dt. 21/03/2006, and pointed out that the irrelevant portion having been not struck off by the A.O. in the said notices, the exact charge/s against the assessee as to whether he concealed the particulars of his income or furnishing inaccurate particulars of such income was not clear. The notices for all the assessment years are extracted for ready reference:-

P.T.O

121
ANNEXURE - 'B'

8

I.T.N.S-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Office of the
Assistant Commissioner of Income-Tax
Income-tax Office
उप आयकर अधिकारी, आयकर मंडल
Central Office, Kondalki Nawas
कुण्डलिक नवाव, मवा-वि-डोंगम
Rua-da-Ourem, Panaji, Goa.
पणजी - गोवा

To
Nirani Sugars H.L.
Kulali Cross.
Muddel St. Bayakel-

Pen 83 / ps HC / 05-06

Dated 21/3/06

Whereas in the course of proceedings before me for the assessment year 2001-02 it appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1) 22 (2) 34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961.

No..... Dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1) 143(2) of the Income-tax Act, 1961.

No..... Dated.....

*have concealed the particulars of your Income or..... furnished inaccurate particulars of such Income.

You are hereby requested to appear before me at 12-30 A.M./P.M. on 10/4/06 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.



M.R. KALE

M. R. KALE
Income-tax Officer
Assistant Commissioner of Income-Tax

I.T.N.S-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF
THE INCOME TAX ACT, 1961

Office of the
Assistant Commissioner of Income Tax
उप आयकर आयुक्त कार्यालय, केंद्रीय मंडल
Central Circle, Pundalik Nwas
पुंडलिक निवास, रुवा-दि-ओरम
Rua-de-Ourem, Panaji, Goa.
पणजी - गोवा

To
Nirani Sugars Ltd
Kulali Cross,
Mudhol Dt. Bgaekul-

Pen 84 / 1540/05-06

Dated.. 21/3/06

Whereas in the course of proceedings before me for the assessment year 2002-03
it appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22 (2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961.

No..... Dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961.

No..... Dated.....

*have concealed the particulars of your Income or.....
furnished inaccurate particulars of such Income.

You are hereby requested to appear before me at 12-30..... A.M./P.M.
on 10/4/06 19..... and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.



M. R. KALE

M. R. KALE
एम. आर. काले

Income Tax Officer
Assistant Commissioner of Income Tax
उप आयकर, आयुक्त, केंद्रीय मंडल
Central Circle, Panaji - Goa
पणजी - गोवा

8 ANNEXURE - B (7)

I.T.N.S-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF
THE INCOME TAX ACT, 1961

Office of the
Assistant Commissioner of Income-Tax
Income-tax Office
Central Office, Prakash, Newa
Raj-100001, Panaji, Goa
प्रादेशिक - नया

To
Nirani Sugars Ltd
Kulali Cross
Mudhol
St. Bagekud

by 85/psuo/05-06

Dated 21/3/06

Whereas in the course of proceedings before me for the assessment year 2003-04,
it appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22 (2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961.

No..... Dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961.

No..... Dated.....

*have concealed the particulars of your Income or.....
furnished inaccurate particulars of such Income.

You are hereby requested to appear before me at 12-30 P.M. on 10/4/06 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

(Seal)

M. R. KALE

8 ANNEXURE - 'B' 7

I.T.N.S-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF
THE INCOME TAX ACT, 1961

Assistant Commissioner of Income-Tax
उप आयकर अधिकारी, आयकर मंडल
City Office
C/o. M/s. Nirani Sugars Ltd.
पुस्तक: निरानी-सुगर
Rua-Bagade, Panaji, Goa.
पणजी - गोवा

Nirani Sugars Ltd
Kulali Cross
Mudhel, St. Bagade

Pen 86/psko/05-06

Dated: 21/3/06

Whereas in the course of proceedings before me for the assessment year 2004-05
appears to me that you:-

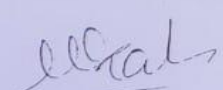
*have without reasonable cause failed to furnish me return of income which you
were required to furnish by a notice given under section 22(1)/22 (2)/34 of the Indian Income-tax
Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under
section 139(2)/148 of the Income-tax Act, 1961.
No..... Dated..... or have without reasonable cause failed to
furnish it within the time allowed and the manner required by the said section 139(1) or by such
notice.

*have without reasonable cause failed to comply with a notice under section
22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax
Act, 1961.
No..... Dated.....

*have concealed the particulars of your Income or.....
furnished inaccurate particulars of such Income.

You are hereby requested to appear before me at 10-30 A.M./P.M.
on 10/4/06 and show cause why an order imposing a penalty on you should not be
made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this
opportunity of being heard in person or through authorised representative you may show cause in
writing on or before the said date which will be considered before any such order is made under
section 271.

(Seal)


M. R. KALE
 एम. आर. काळे
 Assistant Commissioner of Income-Tax
 उप आयकर अधिकारी, आयकर मंडल

12. We have heard rival submissions, perused the material available on record, the orders of the lower authorities as well as the case-law cited.

After perusing the notices issued under section 271(1)(c) for all the impugned assessment years, even dt. 21/03/2006, it is apparent that the irrelevant portion having been not struck off by the A.O. in the said notices and the exact charge/s against the assessee as to whether he concealed the particulars of his income or furnishing inaccurate particulars of such income was not clear. The Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh vs. DCIT reported in [2021] 125 taxmann.com 253 (Bombay)* wherein a similar issue has been decided by the Hon'ble High Court by framing a question of law, and after taking into consideration, the relevant decision of various High Courts as well as the Hon'ble Apex Court, holding as under:

“Question No. 3: What is effect of Supreme Court's decision in Dilip N. Shroff v. Jt. CIT [2007] 161 Taxman 218/291 ITR 519 (SC), on issue of non-application of mind when irrelevant portions of printed notices are not struck off ?

■ *In Dilip N. Shroff, case (supra) 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, case (supra) 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. [Para 187]*

■ *It may, in this context, be respectfully observed 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 case (supra) 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. [Para 188]*

■ *In State of U.P v. Sudhir Kumar Singh 2020 SCC Online SC 847 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'. [Para 189]*

■ Here, section 271(1)(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, *Rajesh Kumar v. CIT* [2007] 2 SCC 181, may be referred to in which the Apex Court has quoted with approval its earlier judgment in *State of Orissa v. Dr. Binapani Dei* [AIR 1967 SC 1269]. 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. [Para 190]

■ As a result, it is held that *Dilip N. Shroff Case (supra)* 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. [Para 191]"

13. In our opinion, the decision rendered by the Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh vs. DCIT (supra)* is squarely applicable in the present case and even the Ld. DR has not disputed this aspect of the matter. We, therefore, respectfully following the said decision of the Hon'ble Bombay High Court quash the impugned penalty imposed by the Assessing Officer under [section 271\(1\)\(c\)](#) of the Act.

14. In the result, all these appeals of the assessee are allowed.

Order pronounced in the open court on 01.04.2022

Sd/-
 (M.L. Meena)
 Accountant Member

Sd/-
 (Anikesh Banerjee)
 Judicial Member

SC. Sr.P.S.

Copy of the order forwarded to:

- (1) The Appellant:-
- (2) The Respondent :-
- (3) The CIT:-
- (4) The CIT (Appeals):-
- (5) The DR, I.T.A.T.:-

True Copy

By Order

Sr. Private Secretary
ITAT