

**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. 111/PAN/2018
Assessment Year: 2009-10**

**I.T.A. No. 112/PAN/2018
Assessment Year: 2010-11**

**I.T.A. No. 113/PAN/2018
Assessment Year: 2012-13**

**I.T.A. No. 114/PAN/2018
Assessment Year: 2013-14**

Deputy Commissioner of Income Tax, Central Circle, Hubballi (Appellant)	Vs.	M/s. N.B. Hiremath Renuka Niwas 3rd Cross, Hosur Hubballi [PAN: AABFN 2435 P] (Respondent)
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Appellant by	Smt. Pratibha R, Advocate
Respondent by	Smt. Rijula Uniyal, Sr. D/R

Date of Hearing	29.03.2022
Date of Pronouncement	31.03.2022

ORDER

Per Bench:

These captioned appeals are filed against the order of the Learned Commissioner of Income Tax (Appeals)- 2, Hubballi, [hereinafter the "Ld. CIT(A)] passed u/s 250 of the Act (hereinafter the "Act") even dt. 20/12/2017, for the Assessment Years 2009-10, 2010-11, 2012-13, 2013-14.

2. The common effective grounds of appeal raised for all the impugned assessment years are extracted for ready reference:-

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty u/s 271(1)(c) holding that penalty notice has not been issued for specific charge ignoring the fact that the purpose of initiating the penalty proceedings was clearly brought out in the assessment order?"

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied u/s 271(1)(c) without considering the fact that the assessee participated in the penalty proceedings and was well aware of the reasons of initiating the penalty proceedings as noted in the assessment order and at no stage of penalty proceedings before the Assessing Officer raised the issue of non-ticking of relevant column in penalty show cause notice as held by the Hon'ble High Court of Karnataka in the case of Sri Durga Enterprises (2014) 44 Taxmann 442?"

3. The sole issue raised by the Id. 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. 30/11/2016, 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.

M/s. N.B.Hiremath,PAN:AABFN2435P
 Order u/s. 153A r.w.s.143(3), AY: 2009-10

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(C) OF
 THE INCOME TAX ACT, 1961**

No.271(1)(C)/DCIT/CC/HBL/2016-17

Office of the
 Deputy Commissioner of Income Tax,
 Central Circle, Hubballi.

Dated: 30.11.2016

To,

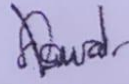
M/s. N.B. Hiremath
 Renuka Niwas, 3rd Cross, Hosur, Hubballi.

WHEREAS in the course of proceedings before me for the assessment year **2009-10** it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are, therefore, requested to appear before me at 11.00 A.M. on **12.01.2017** and show cause why an order imposing penalty on you should not be passed u/s 271(1)(c) of the IT Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized 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(1)(c) of the I.T. Act, 1961.

SEAL




 (V.S.RAWAT)
 Deputy Commissioner of Income-tax
 Central Circle, Hubballi

M/s. N.B.Hiremath,PAN:AABFN2435P
 Order u/s. 153A r.w.s.143(3), AY: 2010-11

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(C) OF
 THE INCOME TAX ACT, 1961**

No.271(1)(C)/DCIT/CC/HBL/2016-17

Office of the
 Deputy Commissioner of Income Tax,
 Central Circle, Hubballi.

Dated: 30.11.2016

To,

M/s. N.B. Hiremath
 Renuka Niwas, 3rd Cross, Hosur, Hubballi.

WHEREAS in the course of proceedings before me for the assessment year **2010-11** it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are, therefore, requested to appear before me at 11.00 A.M. on **12.01.2017** and show cause why an order imposing penalty on you should not be passed u/s 271(1)(c) of the IT Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized 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(1)(c) of the I.T. Act, 1961.

SEAL



(Signature)

(V.S.RAWAT)

Deputy Commissioner of Income-tax
 Central Circle, Hubballi

M/s. N.B.Hiremath,PAN:AABFN2435P
Order u/s. 153A r.w.s.143(3), AY: 2012-13

in paragraph 2. Any request received after the expiry of the said period will not be entertained in view of the specific provisions of Section 220(3).

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(C) OF
THE INCOME TAX ACT, 1961**

No.271(1)(C)/DCIT/CC/HBL/2016-17

Office of the
Deputy Commissioner of Income Tax,
Central Circle, Hubballi.

Dated: 30.11.2016

To,

M/s. N.B. Hiremath
Renuka Niwas, 3rd Cross, Hosur, Hubballi.

WHEREAS in the course of proceedings before me for the assessment year **2012-13** it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are, therefore, requested to appear before me at 11.00 A.M. on **12.01.2017** and show cause why an order imposing penalty on you should not be passed u/s 271(1)(c) of the IT Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized 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(1)(c) of the I.T. Act, 1961.

SEAL



Rawat
(V.S.RAWAT)

Deputy Commissioner of Income-tax
Central Circle, Hubballi

M/s. N.B.Hiremath, PAN:AABFN2435P
Order u/s. 153A r.w.s.143(3), AY: 2013-14

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF
THE INCOME TAX ACT, 1961**

No.271(1)(C)/DCIT/CC/HBL/2016-17

Office of the
Deputy Commissioner of Income Tax,
Central Circle, Hubballi.

Dated: 30.11.2016

To,

M/s. N.B. Hiremath
Renuka Niwas, 3rd Cross, Hosur, Hubballi.

WHEREAS in the course of proceedings before me for the assessment year **2013-14** it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are, therefore, requested to appear before me at 11.00 A.M. on **12.01.2017** and show cause why an order imposing penalty on you should not be passed u/s 271(1)(c) of the IT Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized 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(1)(c) of the I.T. Act, 1961.

SEAL



(Signature)
(V.S.RAWAT)
Deputy Commissioner of Income-tax
Central Circle, Hubballi

4. 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. 30/11/2016, 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]"*

5. 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 and confirmed by the Ld. CIT(A).
6. In the result, all these appeals of the revenue are dismissed.

Order pronounced in the open court on 31.03.2022

Sd/-
(Anikesh Banerjee)
Judicial Member

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

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