

आयकर अपीलीय अधिकरण
मुंबई पीठ "सी "

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH , ACCOUNTANT MEMBER

आअसं.07/मुं/2022 (नि.व. 2011-12)
ITA NO.07/MUM/2022(A.Y.2011-12)

Shri Pravin Champalal Bokadia,
77, Dr. Mahimtura Marg,
3rd Kumbharwada, Near CP Tank,
Mumbai -400 004.

PAN: AAQPB-4778-E

..... अपीलार्थी /Appellant

बनाम Vs.

ITO,WARD 19(2)(5),
Room No.210, 2nd Floor,
Matru Mandir, Tardeo Road, Grant Road(W)
Mumbai 400 007.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rajiv Khandelwal

प्रतिवादी द्वारा/Respondent by : Shri R.A.Dhyani

सुनवाई की तिथि/ Date of hearing : 02/06/2022

घोषणा की तिथि/ Date of pronouncement : 02/06/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -49, Mumbai [in short 'the CIT(A)'] dated 20/12/2021 for the assessment year 2011-12 confirming levy of penalty u/s. 271 (1)(c) of the Income Tax Act, 1961 [in short 'the Act'].

2. Shri Rajiv Khandelwal appearing on behalf of the assessee submitted that penalty u/s. 271(1)(c) of the Act has been levied by the Assessing Officer in respect of addition made on account of alleged bogus purchases. The Id. Authorized Representative for the assessee made two fold submissions against penalty order. The first contention of the Id. Authorized Representative for the assessee is that the notice dated 23/02/2016 issued u/s. 274 r.w.s. 271 of the Act is defective as the notice is not specific as to on which limb of section 271(1)(c) of the Act penalty is being levied. The said notice has been issued in pre-printed Performa. The irrelevant section of the notice has not been struck off. The vagueness in notice makes it defective. The penalty proceedings arising from defective notice are not legally sustainable. In support of his contention the Id. Authorized Representative for the assessee placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Mohammad Farhan A. Shaikh vs. DCIT reported as 434 ITR 1(FB). The second contention of the assessee is that while passing the assessment order, the Assessing Officer has only mentioned that penalty proceedings are being initiated separately. However, nowhere in the assessment order the Assessing Officer has mentioned as to on which limb of section 271(1)(c) of the Act penalty proceedings are being initiated. Even the satisfaction recorded by the Assessing Officer in the assessment order is vague and ambiguous. No penalty is leviable where the satisfaction for levy of penalty does not confirm to the requirement of law.

3. Per contra, Shri R.A. Dhyani representing the Department defended the impugned order. The Id. Departmental Representative submitted that the assessee has indulged in obtaining bogus purchase bills. The assessee has not been able to prove the genuineness of the hawala dealers and purchases made

from them. Hence, the Assessing Officer has rightly levied penalty u/s. 271(1)(c) of the Act on the addition made on account of bogus purchases.

4. We have heard the submissions of rival sides and have examined the orders of authorities below. We have also examined the notice issued u/s. 274 r.w.s 271 dated 23/02/2016 placed on record. A bare perusal of the said notice shows that the same has been issued in a Pre-printed Performa mentioning both limbs of section 271(1)(c) of the Act i.e. “concealed particulars of income” and “furnishing inaccurate particulars of income. The Assessing Officer has to clearly communicate to the assessee, the limb for which penalty is being levied. The Hon’ble Supreme Court of India in the case of T.Ashok Pai vs. CIT292 ITR 11(SC) has held that the expression ‘concealment of income’ and ‘furnishing of inaccurate particulars’ carry different connotations.

5. The Full Bench of Hon'ble Jurisdictional High Court in the case of Mohammad Farhan Shaikh vs. DCIT (supra) has held that where both grounds of section 271(1)(c) of the Act are mentioned in the notice without striking off irrelevant matter, renders the notice defective and thus, would vitiate penalty proceedings. The relevant extract of the observation of Hon'ble Jurisdictional High Court on the issue are reproduced herein under:

“ 180.....

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—vitate 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.

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."

6. Thus, in the light of the facts of the case and the aforesaid decision of Hon'ble Jurisdictional High Court we hold that the notice issued u/s. 274 r.w.s. 271(1)(c) of the Act is defective. Since, the notice is held to be defective, the consequent proceedings arising therefrom are vitiated. Hence, the impugned order is set-aside and appeal of assessee is allowed.

Order pronounced in the open court on Thursday the 02nd day of June, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 02/06/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
Mumbai

ITAT,