

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1079/Mum/2020  
(A.Y. 2010-11)**

Mukund Trikamlal Parmar, C/o P. Murali & Co. Chartered Accountants, 6-3- 655/2/3, Somajiguda, Hyderabad – 500082	Vs.	ITO-32(2)(3), Room No. 305, 3 <sup>rd</sup> Floor, C-11, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 500051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAPP9619E		
Appellant	..	Respondent

Appellant by :	Laxmikanth Rathi
Respondent by :	C.T. Mathews

Date of Hearing	02.06.2022
Date of Pronouncement	02.06.2022

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The solitary issue in the ground of appeal of the assessee is directed against the order of Id. CIT(A) in sustaining the penalty of Rs.1,13,97,870/- levied u/s 271(1)(c) of the Act. The assessee has also filed appeal on the ground that penalty order passed u/s 271(1)(c) of the I.T. Act is void-ab-initio since there is no clear indication about concealment of particulars of income, nor there is clear indication for

furnishing of inaccurate particulars of income, therefore, the notice u/s 271(1)(c) of the Act is bad in law.

2. The fact in brief is that assessee has filed return of income at Rs.3,08,17,813/- on 15.10.2013 and the assessment was completed u/s 143(3) of the Act at Rs.14,03,94,778/-. During the course of assessment the A.O noticed that assessee had traded in shares in huge volume i.e shares were purchased and sold on the same basis, therefore, the A.O treated the claim of long term capital gain and short term capital gain from the sale and purchase of shares as business activity and assess the same as income from business and profession to the amount of Rs.7,02,96,23,900/-. The A.O further noticed that assessee has claimed loss from F & O to the amount of Rs.7,38,18,591/- which was set off from the income derived from short term capital gain of Rs.10,48,18,686/-. The A.O noticed that out of the F & O loss claimed of Rs.7,38,18,591/-, and amount of Rs.7,00,98,539/- was shown as sundry creditors at the end of the year in the name of M/s N.K.B Securities. The assessee was asked to furnish the global report of F & O trade and the contracts notes of F & O trade entered by it. On analysis of the detail the AO observed that assessee had incurred F & O loss of Rs.7,00,98,539/- traded through N.K.B. securities for the entire years. The A.O was of the view that as per the usual contracts of stock market of the payments have to be settled within the stipulated three days wherein in the case of the assessee the loss was allowed without settling the account or forfeiting the margin money of the assessee. The A.O has issued notice u/s 133(6) to M/s N.K.B. Securities but it was found that they were not available at the given address. Even no record was available from the national stock exchange of India. Therefore, the assessee could not substantiate the claim that trade carried out through

M/s N.K.B. Securities was genuine and not an accommodation entry. Therefore, the A.O has treated the F &O loss of Rs.7,00,98,571/- as non genuine and levied penalty u/s 271(1)(c) of the Act for concealment of correct nature/particulars of his income to the extent of Rs.7,00,98,571/- at Rs.1,13,97,870/-.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us at the outset the ld. counsel has submitted that notice u/s 274 r.w.s 271(1)(c) dated 13.03.2013 was issued without striking off the irrelevant limb of Sec. 271(1)(c) of the Act. The ld. Counsel has referred the decision of Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT 125 taxmann.com 253, wherein held that where the notice has been issued in a format without striking off irrelevant matter, penalty proceedings are vitiated. The ld. Counsel has also submitted the copy of the notice issued u/s 13.03.2013.

On the other hand the ld. Departmental Representative has placed reliance on the order of lower authorities.

5. Heard both the side and perused the material on record. Without reiterating the facts as elaborated at para 2 of this order, the A.O has levied penalty of Rs.1,13,97,970/- vide order u/s 271(1)(c) of the Act dated 24.09.2015. Regarding the technical ground of appeal of the assessee that there was no clear indication about the concealment of the particulars of income, nor there was clear indication for furnishing of inaccurate particulars of income, we have perused the copy of notice u/s

274 r.w.s 271(1)(c) of the Act dated 13.03.2013 issued by the A.O. The relevant part is reproduced as under:

*“Whereas in the course of proceedings before me for the Assessment year 2010-11. It appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income.*

*You are hereby requested to appear before me ca 12/04/2013 at 11.00AM and show cause why an order imposing a penalty on you should not be made under Section 271 (1) le) of the Income Tax Act, 1961. If no one attends this office on the said date of bearing, the case shall be decided on the basis of material available on records.”*

On perusal of the above referred notice it is clearly demonstrated that A.O has not struck off the irrelevant part in the notice to specify whether the notice was issued for levying penalty for concealment of particulars of income or furnishing inaccurate particulars of income. It is clear that the notice did not indicate whether there was concealment of particulars of income or furnishing of inaccurate particulars of such income. The A.O has mentioned both limbs of Sec. 271(1)(c) of the Act i.e concealed the particulars of income or furnished inaccurate particulars of income in the notice. In this regard, Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax (Central) Vs. Goa Coastal Resorts and Recreation (P) Ltd. (2021) 130 taxmann.co 379 (SC) held that where there was no record of satisfaction by A.O in relation to any concealment of income or furnishing of inaccurate particulars by assessee in notice issued for initiation of penalty proceedings under Section 271(1)(c), same being sine qua non for initiation of such proceedings. Hon'ble High Court of Bombay in the case of Mohd. Farhan A. Shaikh Vs. DCIT 125 taxmann.com 253, held that where assessment order clearly records satisfaction for imposing penalty on one or other or both grounds mentioned in section 271(1)(c) a mere defect in notice, not striking off

irrelevant matter would vitiate penalty proceedings. The relevant part of the decision of Bombay High Court is reproduced as under:

*“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.”*

We have also noticed that coordinate bench of the ITAT in the case of Choice Diamond Vs. ACIT i.e ITA No. 27/Mum/2020 on identical issue and same facts after following the decision of the Hon'ble jurisdictional court as supra has held that the notice issued under Section 274 r.w.s 271(1)(c) of the Act is defective, hence, the subsequent penalty proceedings arising therefrom are vitiated. There is nothing before us on hand differs from the issues raised in the cases cited (supra) so as to take a different view on this issue. Therefore, since the issue on hand being squarely covered following the decision of Hon'ble jurisdictional High Court of Bombay and decision of the coordinate as supra, the impugned order is quashed because of defective notice issued u/s 274 r.w.s 271 of the Act.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 02.06.2022

Sd/-

(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 02.06.2022

PS: Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,  
सत्यापित प्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai