

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

BEFORE SHRI BASKARAN B.R. (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No.289/MUM/2016 (A.Y.2007-08)
ITA No.290/MUM/2016 (A.Y.2001-02)
ITA No.291/MUM/2016 (A.Y.2002-03)
ITA No.292/MUM/2016 (A.Y.2003-04)
ITA No.293/MUM/2016 (A.Y.2004-05)
ITA No.294/MUM/2016 (A.Y.2005-06)
ITA No.295/MUM/2016 (A.Y.2006-07)

Shri Atul A Sanghvi B-1607m Sankarseth Palace Nana Chowk, Mumbai-400 007 PAN : AHZPS2788P	vs	Asstt. Commissioner of Income-tax Central Circle-11, Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Shri Prakash Jotwani
Department represented by	Smt. Shailaja Rai

Date of hearing	06/07/2022
Date of pronouncement	15/07/2022

ORDER

Per Bench:

The captioned appeals have been filed by the assessee against the order passed by the Ld. Commissioner of Income-tax (Appeals) for assessment years 2007-08 and 2001-02 to 2006-07, respectively, under section 271(1)(c) of the Income-tax Act, 1961.

2. The solitary ground involved in these appeals is pertaining to the levy of penalty under section 271(1)(c) of the Income-tax Act, 1961. Since the issue is

common, we pass a consolidated order on all these appeals, taking ITA No.289/Mum/2016 as the lead case.

3. The brief facts of the case are that it was alleged that the assessee, alongwith one Shri Dilip Shah were involved in issuing bogus bills to various entities, which are mainly involved in steel markets. It was found that they had opened several bank accounts in the names of different persons, who are found to be dummy persons. A search and seizure action was carried out under section 132 of I.T. Act in the case of the assessee on 05/02/2011, based on the above mentioned allegation. The assessment under section 143(3) read with section 153A of the I.T. Act was completed on 31/12/2008 thereby assessing the total income of the assessee at Rs.310,11,08,233/- against the returned income of Rs.3,88,664/-. Subsequently, penalty proceedings under section 271(1)(c) of the Act was initiated and penalty amounting to Rs.111,42,69,984/- was levied for A.Y. 2007-08 and for other impugned assessment years with different quantum. Aggrieved by this, the assessee was in appeal before the Ld.CIT(A), who confirmed the penalty levied by the Assessing Officer in all these appeals. Further aggrieved, the assessee is in appeal before us.

4. During the appellate proceedings, the Ld.AR for the assessee contended that the additional ground of appeal has been filed stating that the Ld.Assessing Officer has issued a show cause notice for levy of penalty for assessment years 2001-02 to 2007-08 without striking off inapplicable charge between concealment of income or filing of inaccurate particulars of income in the show cause notice. The Ld.AR further stated that this additional ground of appeal was not taken before the Assessing Officer or before the Ld.CIT(A) inadvertently. The Ld.AR relied on the decision of National Thermal Power Co.

Ltd vs CIT 229 ITR 383 (SC), wherein it was held that additional grounds of appeal can be raised even during the appellate proceedings. He submitted that the additional ground pertains to legal issue. The Ld.AR relied on the Full Bench decision of Bombay High Court in the case of Mohd. Farhan Shaikh 234 ITR 1 (Bom) wherein it was held that the non striking off the irrelevant portion in the notice which is in printed form, will vitiate the penalty proceedings.

5. The Ld.DR, on the other hand, stated that the Tribunal has upheld the quantum addition in assessee's case for assessment years 2001-02 to 2007-08. The Ld.DR further stated that the assessee's case would be covered under both the limbs of section 271(1)(c) viz. for furnishing inaccurate particulars of income and concealment of income. For this proposition, he relied upon the decision of Hon'ble Delhi High Court in CIT vs Harprashad & Co Ltd (2010) 328 ITR 53 (Del). The Ld.DR further relied on the orders of lower authorities.

6. We have heard the learned representatives of both the parties and perused the materials available on record. It is admitted by the Ld.AR that the quantum additions pertaining to the impugned assessment years has been confirmed by the Hon'ble ITAT in both, the assessee's case as well as that of the partner, Shri Dilip Shah's case. It is also pertinent to point out that the penalty proceedings under section 271(1)(c) in the case of Dilip Shah has also been confirmed by the Hon'ble ITAT in ITAs No.281 to 287/Mum/2016, but it has to be noted that the additional ground that has been taken by the assessee before us was not raised in the case of Shri Dilip Shah before any of the appellate forum nor before the lower authorities. To be precise, additional ground on striking off of the inapplicable portion in notice was not raised in the case of Shri Dilip Shah. The assessee has also filed copy of the common show cause notice dated 28/12/2011 issued under section 274 read with section

271(1)(c) wherein it is noted that the same was issued for assessment years 2001-02 to 2007-08 commonly for all the years in which we observe that the limbs of section 271(1)(c) was not specified or the irrelevant limb was not struck off. Though this ground of appeal was raised for the first time before us, we have proceeded to decide on the legal issue challenging the levy of penalty under section 271(1)(c) of the I.T. Act by admitting the additional ground in all the appeals for the purpose of disposal of these appeals by considering the decision in National Thermal Power Co. Ltd vs CIT (supra). On perusal of the assessment order we find that several additions have been made both in the assessee's case as well as in the case of the partner, Shri Dilip C Shah wherein the Assessing Officer has failed to specify on what ground section 271(1)(c) penalty has to be levied. At para 6 on page 9 of the order under section 271(1)(c) of the penalty order, the Assessing Officer has stated that "Therefore, considering the facts and circumstance of the case I am fully convinced that the assessee has concealed his income and furnished inaccurate particulars of income and hence penalty u/s 271(1)(c) of the I.T. Act, 1961 is levied". That being so, the Assessing Officer in the assessment order dated 28/12/2011 has made several additions, viz. on account of alleged sales, on account of commission on bogus sales, unexplained bank credits, cash deposits and cash found at the time of search. However, the Assessing Officer has failed to specify in the show cause notice on which limb, i.e. whether concealment of income or furnishing of inaccurate particulars of income, the penalty proceedings under section 271(1)(c) were being initiated against each of the addition in the impugned assessment years. In our considered opinion, we are of the view that the Assessing Officer should have specified the particular limb on which the penalty has been initiated for each addition, in order to give an

opportunity to the assessee to defend himself for penalty against each of the additions made. Having specified that the Assessing Officer has failed to do so and has, rather, proceeded on issuing a common show cause notice for all the impugned years without striking off the irrelevant portion in the show cause notice, in the light of the decisions relied upon by the Ld.AR in the case of Mohd. Farhan A. Shaikh vs DCIT (supra) and Dilip N Shroff vs JCIT 291 ITR 519 (SC), both, the jurisdictional High Court as well as the Hon'ble Apex Court 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. In a plethora of judgements pertaining to this issue various courts have consistently reiterated the principle that the assessee must be informed of the grounds on which penalty proceedings are initiated, where statutory notice is a mandatory requirement. Failure to do so will vitiate penalty proceedings in toto. The judgement of the Hon'ble jurisdictional Bombay High Court in Mohd. Farhan S. Shaikh (supra) has specified that even a penal provision with civil consequences must be construed strictly and any ambiguity in this must be decided in favour of the assessee. On the other hand, the decision cited by the Ld.DR in the case of CIT vs Harprashad & Co Ltd (supra) does not pertain to the facts of the present case.

7. Considering the issue in the light of the above observations, it is evident that the Assessing Officer has issued a vague and defective notice under section 274 r.w.s. 271(1)(c) dated 28/12/2011 resultantly making the penalty proceedings in all the impugned assessment years vitiated and hence, all penalty orders are liable to be quashed. We, therefore, set aside the orders of

the authorities below and delete the penalty levied under section 271(1)(c) of the Act, in all the assessment years under consideration.

8. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open Court on 15th July, 2022.

Sd/-

sd/-

(B.R. BASKARAN)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 15/07/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai