

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMRJIT SINGH, AM**

आयकर अपील सं/ I.T.A. No.1363/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2014-15)

Vinati Saraf Mutreja 302, 3 <sup>rd</sup> Floor, Vinayak Heights, Nargis Dutt Road, Bandra (W), Mumbai- 400050.	<b>बनाम/</b> Vs.	ACIT-26(3) 501, 5 <sup>th</sup> Floor, Pratyakshkar Building, BKC, Bandra (E), Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ARTPS7699M</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Siddharth Kothari
Revenue by:	Vranda U Matkari (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 04/07/2022

घोषणा की तारीख /Date of Pronouncement: 22/07/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-38, Mumbai dated 20.03.2019 for the assessment year 2014-15 against the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act").

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO levying penalty of Rs.6,75,938/- u/s 271(1)(c) of the Act which according to assessee, was based on a defective notice and so it was bad in law.

3. The brief fact of the case is that the assessee had paid donation of Rs.12,50,000/- to M/s. Human Genetics and Population (HGP) u/s 35(1)(ii) of the Act and after making donation, the assessee claimed weighted deduction of Rs.21,87,500/-. Later, the AO received information from DDIT(Inv.), Unit Kolkata about beneficiaries of bogus donation to M/s. HGP and as per the information, the assessee



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was also a beneficiary [of giving bogus donation to HGP and thereafter claiming weighted deduction]. Therefore, the AO was pleased to disallow the claim of weighted deduction and added the same [Rs.21,87,500/-] by order dated 30.11.2016 u/s 143(3) of the Act. Thereafter, penalty proceeding was initiated against the assessee and for doing that the AO had issued notice dated 30.11.2016 u/s 274 r.w.s 271(1)(c) of the Act. And after going through the reply of the assessee, the AO was pleased to levy penalty of Rs.6,75,938/- u/s 271(1)(c) of the Act vide order dated 29.05.2017

**4.** Aggrieved by the penalty levied by the AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same. Aggrieved, the assessee is before us.

**5.** We have heard both the parties and perused the records. The main plea of the assessee is that the notice issued u/s 274 r.w.s 271(1)(c) of the Act (refer page no. 14 of the P.B) shows that the notice issued by the AO shows both the charges/fault i.e. (i) have concealed the particulars of income; and (ii) furnishing of inaccurate particulars of such income. According to the Ld. AR, the assessee was not aware as to what fault/charge for which assessee is being proceeded against for levy of penalty. And since there was no specific fault/charge expressly stated in the notice, the impugned notice issued by the AO dated 30.11.2016 (P.B. page no. 14) is bad in law as held by several judicial decisions including the Full Court of the Hon'ble Bombay High Court in the case of Moh. Farhan A Shaikh Vs. DCIT (2021) 434 ITR 1 (Bom) which upheld the ratio of decision of the Division Bench in the case of PCIT Vs. Goa Dourado Promotion Pvt.



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Ltd. (Tax Appeal No. 18 of 2019, dated 29.11.2019), in the case of CIT-11 Vs. Samson Perichery dated 05.01.2017 and did not approve the law laid to the contrary by Division Bench in the case of CIT Vs. Smt. Kaushlaya 2016 ITR 660 (Bom). In the light of the binding judicial precedence, the assessee wants us to hold the impugned notice prior to levy penalty be held to be bad in law and delete the penalty.

**6.** Per contra, the Ld. CIT-DR submitted that the assessee had claimed weighted deduction u/s 35(1)(ii) of the Act, for giving donation to M/s. Human Genetics and Population (HGP) which fact was later found to be false upon an information from DDIT(Inv.) Kolkata. According to the Ld. DR if the DDIT (Inv.) had not brought out this adverse information, the assessee would have got away with the claim of weighted deduction. So according to the Ld. DR, when the assessee realized that he couldn't escape from truth and had no other way admitted the wrong committed by him. In the aforesaid circumstances the assessee accepted that he had made bogus/wrong claim and accepted to remit the taxes. So according to Ld. DR, the action of assessee was not voluntary, so, according to Ld. DR penalty was rightly levied and so we should not interfere with the action of the Ld. CIT(A).

**7.** Having heard both sides, first let us examine the penalty notice issued by the AO u/s 274 r.w.s. 271(1)(c) of the Act dated 30.11.2016 (refer page no. 14 of the P.B). From a perusal of the same, we note that both the faults have been spelt out by the AO which means the AO in the show cause notice has not specified as to for what fault/charge, the assessee is being proceeded against for levy of penalty. In other words,



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the AO has not stricken down one of the fault/charge which is discernable from the penalty notice and by doing so, the assessee was called upon to show cause as to why the penalty ought not be levied on both the faults specified therein. Therefore, the notice did not put the assessee on notice for what specific fault/charge which the AO proposed to levy penalty. Thus, in the result, we note that the assessee was not put to notice by the AO as to what specific charge/fault he is being proceeded against for levy of penalty which omission on the part of AO vitiates the impugned notice. For that, we rely on the decisions of the Full bench of the Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1 (Bombay) dated 11.03.2021 wherein their Lordships has held that the show cause notice issued prior to levy of penalty without specifying the fault/charge against which the assessee is being proceeded against would vitiate the penalty itself. And thus the Hon'ble Court upheld the view of the division bench order in the case of PCIT Vs. Goa Dourado Promotions (P.) Ltd. (Tax Appeal No.18 of 2019, dated 26.11.2019) and held that the contrary view taken by an another division bench in the case of CIT Vs. Smt. Kaushalya (1995) 216 ITR 660 (Bom) does not lay down the correct proposition of law. Further, we take note of the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported



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in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-

*“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar). 4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”*

**8.** Respectfully following the judicial precedents as well as the binding decision of the Full bench decision of the Hon’ble jurisdiction High Court’s in the case of Mohd. Farhan A. Shaikh (supra), we direct the deletion of the penalty levied in this case.

**9.** In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 22/07/2022.

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/07/2022.  
Vijay Pal Singh, (Sr. PS)



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

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

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**