

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.1499/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2014-15)

NNA CRE Properties LLP B-4101, B-Wing, One Avighna Park, Mahadeo Palav Marg, Curry Road, Parel, Mumbai-400012.	बनाम/ Vs.	ACIT-20(2) Room No.217, 2 nd Floor, Piramal Chambers, Lalbaug, Mumbai- 400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKFN0759M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Chetan M. Kacha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 18/07/2022

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)/(NFAC), Delhi dated 23.06.2021 for the assessment year 2014-15 against the penalty confirmed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. The grounds of appeal of the assessee are as under: -

“1. Learned AO erred in law as well as on facts in issuing notice u/s 274 r.w.s 271(1)(c) without application of mind, as the same is issued without mentioning that whether it is levied for concealment of the particulars of income or furnishing inaccurate particulars of income. It is note know to appellate as to under which ground the penalty is proposed to be levied. Hon. CIT(A) has also erred in not considering the same.

2. Learned AO erred in law as well as on facts in levying penalty u/s 271(1)(c) of Rs.1,29,503/- on disallowance of interest of Rs.4,19,102/-



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under 'Income From House Property'. The Hon. CIT(A) has erred in confirming the same.

3. Learned AO erred in law in levying penalty u/s 271(1)(c) before finalizing of the quantum proceedings as per the provisions of section 275 of the Act. The Hon. CIT(A) has erred in confirming the same.”

3. None appeared on behalf of the assessee. The ground no. 1 of the assessee is against the action of the AO issuing an invalid/defective show cause notice proposing penalty which according to the assessee was vague; and the assessee was not aware as to what was the fault/charge for which the AO was proposing to levy penalty on the assessee. And the show cause notice proposing the penalty for the assessee dated 07.06.2017 is found place at page no. 2 of the Paper Book and from perusal of which we note that the AO has not specified as to what specific fault as envisaged u/s 271(1)(c) of the Act has been committed by the assessee i.e. “*concealment of income*” or “*furnishing inaccurate particulars of such income*”. Rather the show cause notice reveals that the AO has asked the assessee as to why the penalty u/s 271(1)(c) of the Act should not be levied against the assessee. Thus, we note that the show cause notice omits to specify the fault/charge against the assessee. So, the assessee was in the dark as to what fault for which he is being proceeded against pursuant to the penalty notice. Therefore, in the aforesaid facts and circumstances of the case, we hold that the show cause notice issued by AO vide letter dated 07.06.2017 is bad in law and therefore the penalty levied is vitiated. 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.



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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 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



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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.”

6. 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.

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

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

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/07/2022.

Vijay Pal Singh, (Sr. PS)

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,

सत्यापित प्रति //True Copy//

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