

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

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 448/MUM/2022
(ASSESSMENT YEAR: 2009-10)

Venktesh Securities Limited,
415, Raheja Chambers,
Nariman Point, Mumbai - 400021
[PAN: AAACV5479K]

..... Appellant

Vs

The Income Tax Officer,
Ward 3(3)(4), Mumbai

..... Respondent

Appearances

For the Appellant/ Assessee

: Shri A K Tekriwal/
Saurabh Gupta

For the Respondent/Department

: Ms. Vranda U Matkari

Date of conclusion of hearing

: 27.06.2022

Date of pronouncement of order

: 30.06.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 11.02.2020, passed by the Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter referred to as 'the CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in appeal [ITBA/APL/S/250/2019-20/1025014913(1)] for the Assessment Year 2009-10, whereby the CIT(A) had dismissed the appeal filed by the Appellant against the order, dated 16.03.2018, passed under Section 271(1)(c) of the Act levying penalty of INR 4,73,079/-.

Though the appeal has been filed after the expiry of period of 60 days prescribed in Section 253(3) of the Act for filing the appeal before Tribunal, the appeal is being treated as being filed within limitation as the same has been filed within the extended time allowed by the Hon'ble Supreme Court vide order, dated 23.03.2020 and 27.04.2021 passed in the Suo Motu Writ Petition (Civil) No. 3 of 2020 read with order, dated 23.09.2021, passed in M.A. No. 665 of 2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020.

2. Appellant has raised following rounds of appeal:

1. *That, on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the penalty of Rs.4,73,079/- levied by the Ld. Income Tax Officer, Ward 3(3)(4), Mumbai, under section 271(1)(c) of the Income Tax Act, 1961.*
2. *That, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the penalty of Rs.4,73,079/- levied u/s 271(1)(c) of the Act although the Notice dated 30.03.2013 issued by the Ld. Income Tax Officer under section 271(1)(c) of the Income Tax Act, 1961 was a defective and invalid Notice without scoring out the inappropriate words and phrases and without specifying the charges against the Appellant Assessee as to whether the penalty was proposed to be levied for concealing the particulars of income or for furnishing inaccurate particulars of income.*
3. *That, without prejudice, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the penalty of Rs.4,73,079/- levied by the Ld. Income Tax Officer, under section 271(1)(c) of the Act only on the ground that the assessee has accepted the addition of Rs.15,31,000/- made in the assessment by not filing any appeal against such addition.*

4. That, the Appellant Company craves leave to amend and alter or to withdraw and/or to raise additional grounds at any time before or at the time of hearing of the appeal.”

3. The relevant facts, in brief, are that the Appellant filed return of income for the Assessment Year 2009-10 on 13.09.2009 which was processed under Section 143(1) of the Act. However, re-assessment proceedings were initiated and assessment under Section 143(3) read with Section 147 of the Act was framed on the Appellant vide order dated 30.03.2013 at total income of INR 1,26,93,372/- after making, inter alia, an addition of INR 15,31,000/- on account of cash deposits in bank account. Penalty proceedings, under Section 271(1)(c) of the Act were also initiated against the Appellant on this issue. Vide order, dated 16.03.2018, the penalty of INR 4,73,079/- was levied on the Appellant.
4. The appeal filed by the Appellant against the penalty order dated 16.03.2018 was dismissed by CIT(A) vide order, dated 11.02.2020.
5. Being aggrieved, the Appellant has filed the present appeal.
6. Before us, the Ld. Authorized Representative of the Appellant submitted that the issue raised in Ground No. 2 is covered in favour of the Appellant by the judgment of the Hon'ble Bombay High Court in the case of **Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum** reported in **434 ITR 1 (Bombay)**, as the penalty notice, dated 30.03.2013, has been issued without deleting or striking off inapplicable part. While the Ld. Departmental Representative relied upon the penalty order to support his case,

he fairly acknowledged the fact that the penalty notice has been issued under Section 271 read with 274 of the Act without deleting or striking off inapplicable part.

7. We have heard the parties, perused the record and considered legal position. The full Bench of the Hon'ble Bombay High Court in the case Mohd. Farhan A Shaikh Vs. DCIT (supra) has held that a mere defect in the notice - not striking off the irrelevant matter, would vitiate the penalty proceedings. The relevant extract of the aforesaid judgment reads as under:

“Answers:

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.
(Emphasis supplied)

8. A perusal of the penalty notice, dated 30.03.2013, issued under Section 274 read with 271 of the Act would show that it in an omnibus show cause notice issued without deleting or striking off the inapplicable part. Similarly, the Assessment Order, dated 30.03.2013, is also vague as it states that "*Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 are initiated separately for the default committed within the meaning of that section.*" Same is the case with the penalty order, dated 16.03.2018, passed under Section 271(1)(c) of the Act, as it also does not state under which limb of Section 271(1)(c) of the Act penalty has been levied. Paragraph 6.3 of the aforesaid penalty order reads as under:

"6.3 The assessee has failed to discharge the onus on his part to explain the source of cash received by it even during the instant penalty proceedings. Therefore, I am fully convinced that the assessee has committed default within the meaning of Section 271(1)(c) of the Act on this account and made itself liable for penalty.....

7. The minimum penalty..... in the backdrop of the discussion in foregoing paras, I am fully satisfied that this is a fit case for imposition of penalty under Section 271(1)(c) of the Act. Accordingly, minimum penalty being 100% i.e. Rs. 4,73,079/- [Rupees Four Lakhs Seventy Three Thousand and Seventy-Nine Only) is levied in this case." (Emphasis supplied)

9. In view of the above, Ground No. 2 is allowed following the Full Bench decision of the Hon'ble jurisdictional High Court in case of

Mohammed Farhan A Shaikh vs DCIT (supra). The penalty proceedings stand vitiated on account of defect in the penalty notice dated 30.03.2013 issued under Section 274 read with Section 271 of the Act. Accordingly, penalty order, dated 16.03.2018, passed under Section 271(1)(c) of the Act is set aside as being invalid and without jurisdiction.

10. Since, we have decided the Ground No. 2 as above, the need to adjudicate Ground No. 1, 3 and 4 does not arise and the same are disposed off as being infructuous.
11. In the result, appeal filed by the Appellant is allowed for statistical purposes.

Order pronounced on 30.06.2022.

Sd/-

(B.R. Baskaran)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.06.2022
Alindra, 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