

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

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

आयकर अपील सं/ I.T.A. No.343/Mum/2019
(निर्धारण वर्ष / Assessment Years: 2009-10)

Shri Roshan Sequeira IQN Data Solutions Pvt. Ltd., 347, Laxmi Plaza Indl. Estate, Andheri (W), Mumbai-400059.	बनाम/ Vs.	DCIT-24(3) Piramal Chambers, Mumbai-400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ASBPS3025N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Smt. Mahita Nair (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 20/07/2022
घोषणा की तारीख /Date of Pronouncement: 28/07/2022

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)-36, Mumbai dated (not specified) for the assessment year 2009-10 against the penalty confirmed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act").

2. None appeared for the assessee. The main grievance of the assessee is discernable from grounds of appeal is against the action of the Ld. CIT(A) confirming the penalty levied by the AO u/s 271(1)(c) of the Act to the tune of Rs.18,00,000/-.

3. At the outset, we note that a notice has been issued by the AO dated 04.03.2014 proposing levy of penalty u/s 271(1)(c) of the Act which according to assessee is bad in law. From a perusal of the penalty notice dated 04.03.2014, we note that the AO has not specified the fault/charge for which assessee has been put to notice for levy of penalty. Meaning, the show cause notice does not specify for what



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fault/charge the penalty has been proposed against the assessee i.e. have “*concealment of income*” or “*furnishing inaccurate particulars of such income*”. Having not done so, the assessee was in the dark as to what fault it has to defend against the proposed penalty. Therefore, since show cause notice itself is bad in law, the penalty levied is vitiated. For that, we rely on the decisions of the Full bench of the Hon’ble Jurisdictional of 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 to 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.

4. As noted earlier, we find that the specific fault/charge against which the assessee was called upon to explain vide the notice dated 04.03.2014 did not explicitly convey to the assessee for which fault/charge the assessee is being proceeded against. Resultantly, the show cause notice is found to be defective/invalid, and therefore it is held to be bad in law. For doing that we rely on 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



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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 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 28/07/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/07/2022.
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,

सत्यापित प्रति //True Copy//

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