

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1998/DEL/2020 (A.Y 2012-13)

PTC Energy Ltd. 2 nd Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi PAN No. AAACP7884J (APPELLANT)	Vs.	ACIT Circle-19(2) New Delhi (RESPONDENT)
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Assessee by :	Sh. Sanat Kapoor, Adv
Department by:	Shri T. Kipgen, CIT DR

Date of Hearing	04.08.2022
Date of Pronouncement	12.08.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2012-13 against the orders of the Ld. Commissioner of Income Tax (Appeals)-7, New Delhi dated 13/01/2020.

2. The grounds of appeal are as under:-

“1. That the penalty order passed U/s 271(l)(c) imposing penalty of Rs 12,66,900/- is illegal, bad in law and without jurisdiction.

2. *That the CIT(A) has failed to appreciate that in view of the facts and circumstances of the case, the penalty was neither validly initiated against the appellant and no proper satisfaction was recorded by the AO to initiate penalty. Hence the penalty order has been wrongly upheld by the Ld CIT(A).*

3. *That, in view of the facts and circumstances, CIT (A) has erred on facts and in law in holding that the addition of Rs 41 Lakhs upheld in quantum proceedings justified the levy of penalty.*

4. *That the CIT(A) has failed to appreciate that mere upholding of addition or disallowance does not warrant or justify the levy of penalty.*

5. *That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the penalty levied.*

6. *That the CIT(A) has failed to consider and appreciate the various judicial pronouncements and settled judicial principles do not warrant the levy of penalty on the given facts and circumstances.*

7. *That the notice issued for initiation of penalty proceedings is vague , arbitrary and does not specify the charge on which the penalty is to be levied.*

8. *That the penalty was initiated on a different charge but levied on a different charge . Hence the penalty order is illegal and vitiated under law.*

9. *The Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing.”*

3. Brief facts of the case are that the assessment order dated 02/03/2015 came to be passed against the assessee by disallowing of preliminary Exp. W/off of Rs. 41,00,000/- and a sum of Rs. 11,70,127/- has been disallowed u/s 14A of the Act. Consequent to the assessment order a penalty proceedings have been initiated and vide order dated 31/07/2019, the Ld. A.O has passed an order u/s 271(1)(c) of the Act by imposing penalty of Rs. 12,66,900/-.

4. As against the penalty order, the assessee has filed an appeal before the CIT(A) and the Ld.CIT(A) vide order dated 13/01/2000 dismissed the Appeal filed by the assessee. Aggrieved by the order of the Ld. CIT (A) dated 13/01/2020, the assessee has preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee has produced copy of the penalty notice dated 02/03/2015 along with the Paper Book, which is re produced hereunder:-

ITNS-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Dated: 02.03.2015

To,
The Principal Officer,
MS. PTC ENERGY LTD.
2ND FLOOR, NBCC TOWER, 15 BHIKAJI
CAMA PLACE, NEW DELHI 110066

Sir,

Whereas in the course of proceedings before me for the assessment year 2012-13 it appears to me that you:-

*have without reasonable cause failed to furnish the return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income tax Act, 1961 No. _____ dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under section 22(1)/22(2)/34 of the Indian Income tax Act, 1922 or under section 142(1)/143(2) of the Income tax Act, 1961.

*have concealed the particulars of your income or _____ or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 10:15 AM on 04.03.2015 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing or before the said date which will be considered before any such order is made under section 271.

The Ld. Counsel for the Assessee submitted that penalty proceedings were initiated, and penalty has been levied without specifying the exact limb of Section 271(1)(c) of the Act in the Notice. Further submitted that, the Ld. A.O has issued the notice without striking off irrelevant limb and specifying the charge for which the notice was issued. By relying on the decision of the Hon'ble Supreme Court in the case of Dilip N Shroff reported in 291 ITR 519 submitted that, due to issuance of defective penalty notice, the entire penalty proceedings is vitiated.

5. Per contra, the Ld. DR relying on the orders of the Lower Authorities justified the same and submitted that the appeal is deserves to be dismissed.

6. We have heard the Counsel for the assessee and Ld. DR, perused the material on record and gave our thoughtful consideration. On perusal of the notice issued u/s 274 read with Section 271 of the Act, it is found that the said notice is stereotype one and the AO has not specified any limb or charge for which the notice was issued i.e. either for concealment of particulars of income

or furnishing of inaccurate particulars of such income. It can be seen from the notice issued u/s 274 read with Section 271(1)(c) of the Act, Assessing Officer did not strike off irrelevant limb in the notice specifying the charge for which notice was issued.

7. The identical issue came up before the Hon'ble Bombay High Court (full bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT [434 ITR (1)] and the Hon'ble High Court held as under:

"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(l)(c), does a mere defect in the notice--not striking off the irrelevant matter--vitiate 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(l)(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.

182. *More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.*

183. *Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushaiya does not lay down the correct proposition of law.*

Question No.2: Has Kaushaiya failed to discuss the aspect of 'prejudice?'

184. *Indeed, Kaushaiya did discuss the aspect of prejudice. As we I.T.A.No.1409/Del/2016 have already noted, Kaushaiya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushaiya, "fully knew in detail the exact charge of the Revenue against him". For Kaushaiya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, "the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went onto observe that for sustaining the plea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Kaushaiya does the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done ",*

185. *No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by*

the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under section 274. So asserts Kaushalya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.

186. That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers. Kaushalya's insistence that the previous proceedings supply justification and cure the defect in penalty proceedings has not met our acceptance.

Question No. 3: What is the effect of the Supreme Court's decision in Dilip N. Shroff on the issue of non-application of mind when the irrelevant portions of the printed notices are not struck off ?

187. In DUip N. Shroff, for the Supreme Court, it is of "some significance that in the standard Pro-forma used by the assessing officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done". Then, Dilip N. Shroff, on facts, has felt that the assessing officer himself was not sure whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars.

188. We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for I.T.A.No.1409/Del/2016 ambiguity. Therefore, Dilip N. Shroff

disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays nonapplication of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

189. *In Sudhir Kumar Singh, the Supreme Court has encapsulated the principles of prejudice. One of the principles is that "where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, "except in the case of a mandatory provision of law which is conceived not only in individual interest but also in the public interest".*

190. *Here, [section 271\(l\)\(c\)](#) is one such provision. With calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling with or dilution. For a further precedential prop, we may refer to [Rajesh Kumar v. CIT](#)[74], in which the Apex Court has quoted with approval its earlier judgment in [State of Orissa v. Dr. Binapani Dei](#)[75]. According to it, when by reason of action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice must be followed. In such an event, although no express provision is laid down on this behalf, compliance with principles of natural justice would be implicit. If a statute contravenes the principles of natural justice, it may also be held ultra vires [Article 14](#) of the Constitution.*

191. *As a result, we hold that Dilip N. Shroff 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. Conclusion: We have, thus, answered the reference as*

required by us; so we direct the Registry to place these two Tax Appeals before the Division Bench concerned for further adjudication."

8. As could be seen from the above the Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT [(2021) 434 ITR 1 (Bom)] while dealing with the issue of non-strike off of the irrelevant part in the notice issued u/s.271(l)(c) of the Act, held that assessee must be informed of the grounds of the penalty proceedings only through statutory notice and an I.T.A.No.1409/Del/2016 omnibus notice suffers from the vice of vagueness.

9. Ratio of this full bench decision of the Hon'ble Bombay High Court (Goa) squarely applies to the facts of the assessee's case as the notice u/s. 274 r.w.s. 271(l)(c) of the Act were issued without striking off the irrelevant portion of the limb and failed to intimate the assessee the relevant limb and charge for which the notices were issued.

8. Thus, by following the above ratio, we are of the opinion that, the penalty order passed u/s 271(1)(c) of the Act by the Assessing Officer is erroneous. Accordingly, the penalty order dated 31/07/2019 passed by the A.O for Assessment Year 2012-13 is hereby quashed. Accordingly, Assessee's Grounds of Appeal are allowed.

9. In the result, Appeal filed by the assessee is Allowed.

Order pronounced in the open court on 12th th August, 2022.

Sd/-
(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 12/08/2022
R.N Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI