

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E" NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A No. 8927/Del/2019  
निर्धारण वर्ष/Assessment Year: 2010-11

Shri Mohd. Jamal, 355/125-C, Ghaffar Manzil, Jamia Nagar, Okhla, New Delhi - 110 025.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 62 (1), New Delhi.
PAN No. AGJPJ9907E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितीकीओरसे / Assessee by :	Shri Rajesh Jain, C. A.;
राजस्वकीओरसे / Department by :	Shri Vipul Kashyap, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	24.08.2022
उद्घोषणाकीतारीख/Pronouncement on :	24.08.2022

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-20 [hereinafter referred

to CIT (Appeals)] New Delhi, dated 20.08.2019 for assessment year 2010-11.

2. The assessee has raised the following grounds of appeal:-

*“1. That on the facts and circumstances of the case, the Order 20-08-2019 passed by the learned CIT (A) confirming the penalty imposed under Section 271(1)(c) of the Act is bad, both in the eyes of law as also on the facts;*

*2. That on the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in confirming the action of the Assessing Officer in levying penalty amounting to Rs.641029.00;*

*3. That the Order passed by the learned CIT (A) is bad in law as the Notice purportedly issued to the appellant was never served on him and as such since no proper opportunity of hearing was provided and the principles of natural justice have been flouted, the said Order needs to be quashed;*

*4. That on the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the penalty u/s 271(1)(c) of the Act without giving any finding as to the merits of the case on concealment and furnishing of inaccurate particulars of income.*

*5. That on the facts and circumstances of the case, the learned CIT (A) has erred both on the facts and in law in confirming the penalty under Section 271(1)(c) of the Act, despite the fact that there is neither concealment nor furnishing of inaccurate particulars;*

*6. That on the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the penalty because no penalty, for concealment can be levied on the income which has been assessed on estimate basis. Reference made to (a) CIT vs. Aero Traders Pvt. Ltd. [2010] 322 ITR 316 (Del), (b) CIT vs. Siddhartha Enterprises [2010] 322 ITR 80 (P & H), (c) CIT vs. Whiteline Chemicals [2014] 360 ITR 385 (Guj), (d) Shri Radhey Shyam vs. ITO [ITA No. 5268/Del/2015 decided on 31/10/2017 by ITAT Delhi];*

*7. That without prejudice to the foregoing grounds, the Order passed by the learned CIT (A) is bad inasmuch as the Order dated 02-02-2018 passed in the quantum assessment by the Hon'ble ITAT has not been taken into account and the levy of penalty u/s*

*271(1)(c) of the Act can only be to the extent as laid down in the said quantum Order passed by the Hon'ble ITAT;*

*8. That all grounds of appeal are separate & mutually exclusive to one another."*

3. At the outset, the Id. Counsel for the assessee submits that assessee has raised additional grounds of appeal challenging the very levy of penalty based on the notice issued under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 (the Act) as there is no specific charge mentioned in the said notice. Ld. Counsel submits that since the additional grounds raised are purely legal grounds, the same may be admitted. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT [(1998) 229 ITR 393].

4. Heard rival submissions. The assessee has raised the following additional grounds of appeal:-

*"1. The Order levying Penalty under section 271(1) (c) is illegal as there is no satisfaction as to which limb of the section Penalty has been initiated. The AO has initiated penalty in the last para of the Assessment Order for furnishing of inaccurate particulars of income and Concealment of Income both.*

*2. The Order levying Penalty under section 271(l)(c) of the Act is barred by limitation as the Order has not been passed within six months from the end of the month in which Honourable ITAT Bench Pronounced the Order as per Section 275 of the Act."*

5. The additional grounds raised by the assessee challenging the very initiation of the penalty levied under section 271(1)(c) of the Act, the same is purely a legal issue. Thus, the additional grounds raised by the assessee are admitted for adjudication.

6. The Ld. Counsel for the assessee at the outset submits that penalty order is bad in law as the penalty proceedings were initiated and penalty was levied without specifying the exact limb of Section 271(1)(c) of the Act. The Ld. Counsel for the assessee referring to the penalty notice issued u/s 274 read with section 271(1)(c) of the IT Act submitted that the notice was issued mechanically stating that assessee has concealed particulars of income or furnished inaccurate particulars of such income. In other words, the notice was issued for both the limbs without strike off irrelevant limb and specifying the charge for which the notice was issued. Therefore, the Ld. Counsel for the assessee submits that since the notice was issued without specifying the charge for which notice was issued the penalty proceedings initiated were bad in law and consequently levy of penalty u/s 271(1)(c) cannot be sustained. Reliance was placed on the following decisions:-

- i) PCIT Vs. Sahara India Life Insurance Co. Ltd.  
432 ITR 84 (Del.);
- ii) CIT Vs. SSA's Emerald Meadows (2016)  
73 taxmann.com 241 (Kar.); &
- iii) CIT Vs. Manjunatha Cotton & Ginning Factory  
359 ITR 565 (Kar.)

7. Referring to the above judgments, Ld. Counsel for the assessee submitted that since the notices issued u/s 274 read with section 271(1)(c) of the Act did not specify the limb for which or the charge for which it was issued the penalty order passed pursuant to such notice is bad in law. On the other hand, the Ld. DR referring to the assessment order submits that the penalty was levied for the concealment of particulars of income.

8. Heard rival submissions perused the orders of the authorities below and the decisions relied on. On perusal of the notices issued u/s 274 read with section 271(1)(c) of the Act we observe that the notice was issued stereotyped and the Assessing officer 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.

9. We observe that an 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—vitiating the penalty proceedings?"*

*181. It does. The primary burden ties 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 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". Kaushalya 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 ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays non-application 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."

10. 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 omnibus notice suffers from the vice of vagueness.

11. In the case of PCIT Vs. Sahara India Life Insurance Co. Ltd. (supra) the Hon'ble jurisdictional High Court held as under:-

*“ The respondent had challenged the upholding of the penalty imposed under section 271(1)(c) of the Act, which was accepted by the Income Tax Appellate Tribunal. It followed the decision of the Karnataka High Court in CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Karn.) and observed that the notice issued by the Assessing Officer would be bad in law if it did not specify in which limb of section 271(1)(c) the penalty proceedings had been initiated under, i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgement in the subsequent order in CIT Vs. SSA's Emerald Meadows (2016) 73 taxmann.com 241 (Karn.), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by an order dated August 5, 2016 [CIT Vs. SSA's Emerald Meadows (2016) 386 ITR (St.) 13 (SC)].”*

12. As could be seen from the above the Hon'ble jurisdictional High Court upheld the order of the Tribunal in holding that the notice issued by the Assessing Officer was bad in law if it did not specify under 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 for furnishing of inaccurate particulars of income.

13. Ratio of the 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 was 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. Thus, respectfully following the said decision we hold that the penalty order passed u/s. 271(1)(c) of the Act by the Assessing Officer is bad in law and accordingly the penalty order passed u/s. 271(1)(c) of the Act for Assessment Year 2008-09 is quashed.

14. Even otherwise the addition made by Assessing Officer is only on ad-hoc basis by estimating the profit on book results which should not attract penal provisions under section 271(1)(c) of the Act. We draw support from the following decisions :-

- (i) CIT Vs. Aero Traders Pvt. Ltd.  
[322 ITR 316 (Del.)]
- (ii) CIT Vs. Subhash Trading Co.  
[221 ITR 110 (Guj.)]
- (iii) Hargopal Singh Vs. CIT  
[258 ITR 85 (P&H)].

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

Order pronounced in the open court on 24/08/2022

Sd/-  
( SHAMIM YAHYA )  
ACCOUNTANT MEMBER

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated: 24/08/2022

\*MEHTA\*

Copy forwarded to :

1. Appellant;

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

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	24.08.2022
Date on which the typed draft is placed before the dictating member	24.08.2022
Date on which the typed draft is placed before the other member	24.08.2022
Date on which the approved draft comes to the Sr. PS/ PS	24.08.2022
Date on which the fair order is placed before the dictating member for pronouncement	24.08.2022
Date on which the fair order comes back to the Sr. PS/ PS	24.08.2022
Date on which the final order is uploaded on the website of ITAT	24.08.2022
Date on which the file goes to the Bench Clerk	24.08.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	