

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

**BEFORE SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER  
AND**

**SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 9803/DEL/2019 (A.Y 2007-08)**

M/s. Bits Information Technology Solutions Pvt. Ltd., IPSO LEGAL, H-35, 1 <sup>st</sup> Floor, Jangpura Extension, New Delhi – 110 014. <b>PAN No. AACCB7269F.</b> <b>(APPELLANT)</b>	Vs.	Income Tax Officer, Ward : 3 (1),  New Delhi.  <b>(RESPONDENT)</b>
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<b>Assessee by</b>	<b>Ms. Sumangla Saxena, Adv. &amp; Shri Shyam Sunder, Adv.</b>
<b>Department by</b>	<b>Shri Kanav Bali, Sr. D. R.;</b>

<b>Date of Hearing</b>	<b>19.10.2022</b>
<b>Date of Pronouncement</b>	<b>21.10.2022</b>

**ORDER**

**PER YOGESH KUMAR US, JM**

This appeal is filed by the assessee for assessment year 2007-08 against the order of the Id. Commissioner of Income Tax (Appeals)-2, New Delhi [hereinafter referred to as CIT (Appeals)] dated 21.11.2019.

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

*“1. That learned Commissioner of Income Tax (Appeals) has erred both in law as well as on facts in confirming the levy of penalty of Rs.8,87,136/- u/s 271(1)(c) of the Act, levied by the learned Assessing Officer, without appreciating that penalty was levied merely because certain addition have been confirmed by the CIT(A) and no appeal was filed by the Assessee as it has no tax liability and closed the business. While confirming the penalty levied u/s 271(1)(c) of the Act, learned Commissioner of Income Tax (Appeals) has erred in failing to appreciate that:*

*(i) The learned Assessing Officer was not satisfied whether Assessee has concealed or filed inaccurate particulars of income on the additions sustained by the CIT (A), which is mandatory for initiating or imposing penalty.*

*(ii) She totally ignored the directions of the Hon'ble Supreme Court and jurisdictional High Court that satisfaction of the Assessing Officer is mandatory while Assessing Officer was confused by stating concealed in the Assessment order and subsequently during issuing notice and even in the order levying penalty whether Assessee has concealed or filed inaccurate particulars.*

*(iii) She ignored that the Assessing Officer himself partially accepted loans received from parties whose addition has been sustained by the CIT(A) by not appealing against the deletion in quantum appeal by the ITAT.*

(iv) *She also ignored the vital evidence filed before her which evidences were also placed during penalty proceedings before the Assessing Officer which clearly , establishes that investment was made by them through account payee cheques duly depicted in their bank statement and was confirmed by them.*

(v) *She ignored that another addition on account of advance received from foreign parties for providing services was declared in the books of account and remained outstanding which was not disputed by the Assessing Officer hence neither it is concealed nor any inaccurate particulars of income so, as to attract penal provisions.*

2. *That Learned Commissioner of Income Tax Appeals has erred in law as well as on facts in not appreciating that the Assessing Officer did not appreciate the evidence already on record and also not providing the reasonable sufficient opportunity to the Assessee.”*

3. Brief facts of the case are that, the assessee filed its return of income declaring loss of Rs. (-)47,34,488/- and the assessment was completed u/s 144 of the Act at a total income of Rs. 79,85,945/-. The addition has been made at Rs. 54,02,751/- as unexplained credits introduced in garb of share application money, similarly, addition u/s 68 of the Act was also made in respect of unexplained Sundry Creditors of Rs. 14,05,580/- and further depreciation of Rs. 53,978/- was disallowed and the fixed assets claimed to be purchased during the year under consideration. In the quantum appeal, the Ld.CIT(A) upheld partial addition made u/s 68 of the Act confirming the addition of Rs. 14,05,580/- made u/s 68 of the Act, in respect of Sundry Creditors, deleted the disallowance of depreciation and deleted the entire disallowance made out of the expenses.

4. The penalty proceedings has been initiated against the assessee and penalty order u/s 271(1)(c) of the Act has come to be passed on 28/03/2014.
5. As against the penalty order dated 28/03/2104, the assessee has preferred the appeal before the CIT (A) and the Ld.CIT (A) vide order dated 21/11/2019, dismissed the appeal filed by the assessee.
6. Aggrieved by the order dated 21/11/2018, the assessee has preferred the present appeal.
7. The Ld. Counsel for the assessee vehemently submitted that the Ld.CIT (A) has committed an error by confirming the levy of penalty of Rs. 8,87,136/- u/s 271(2)(c) of the Act without appreciating that the penalty was levied merely because certain additions have been confirmed by CIT(A) and no appeal was filed by the assessee as it has no tax liability and closed the business.
8. The Ld. Counsel for the assessee further submitted that the Assessing Officer has not recorded proper satisfaction. The Assessing Officer was himself was not sure as to whether the assessee has concealed the income or filed inaccurate particulars of income on the additions sustained by the CIT(A). the penalty proceedings has been initiated with a defective notice without specifying any limb or charge for which the notice were issued. Therefore, submitted that, penalty imposed on the assessee require to be quashed.
9. Per contra, the Ld. AR has relied on the orders of the Lower Authorities.
10. We have heard the parties, perused the material on record and gave our thoughtful consideration

11. We have perused notice issued u/s 274 read with Section 271 of the Act, it is found that the Ld. A.O. 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. The notice issued u/s 274 read with Section 271(1)(c) of the Act is reproduced hereunder:-

3. अधिनियम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन नोटिस  
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

To  
M/s. Bits Information Technology  
Sole Proprietor  
Mr. S. Gopalakrishnan J.  
New Delhi

Income Tax Office  
New Delhi  
Dated: 30/12/2008  
INCOME TAX OFFICER  
Ward-21, P. Block, USA  
New Delhi

Whereas in the course of proceedings before me for the assessment year 2007-08 it appears to me that you :-  
I have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated .....  
I have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5

You are hereby requested to appear before me at 11:30 A.M./P.M. on 25/1/2009 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 authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

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Seal  
Assessing Officer  
INCOME TAX OFFICER  
WARD-21, P. BLOCK, USA  
NEW DELHI

“Delete inappropriate words and paragraphs.”

12. The identical issue as to whether the order of the penalty is sustainable which was initiated by issuing a defective notice without striking off irrelevant limb and without specifying the charge for which notice was issued? has been decided by 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--vitiates 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". 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 Dilip 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."

13. 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.

14. 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.

15. 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 and the order of the CIT(A) in confirming the penalty order are erroneous. Accordingly, the penalty order dated 28/03/2014 passed by the A.O for Assessment Year 2007-08 is hereby quashed. Accordingly, Assessee's Grounds of Appeal are allowed.

16. In the result, Appeal filed by the assessee is allowed.

**Order pronounced in the Open Court on : 21 .10.2022.**

**Sd/-**  
**(B. R. R. KUMAR)**  
**ACCOUNTANT MEMBER**  
Dated : 21/10/2022

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

\*R.N\*

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI