

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

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

**SH. YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A. No. 9568/DEL/2019 (A.Y 2009-10)**

Biotronic Medical Devices India Pvt. Ltd. Unit No. 805-807, 8 <sup>th</sup> Floor Commercial Complex, DLF Tower- B, Jasola, New Delhi <b>PAN: AADCB138Q</b> <b>(APPELLANT)</b>	Vs.	ACIT Circle-5 (1) Room No. G15B, C. R. Building, New Delhi  <b>(RESPONDENT)</b>
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**I.T.A. No. 9800/DEL/2019 (A.Y 2010-11)**

Biotronic Medical Devices India Pvt. Ltd. Unit No. 805-807, 8 <sup>th</sup> Floor Commercial Complex, DLF Tower- B, Jasola, New Delhi <b>PAN: AADCB138Q</b> <b>(APPELLANT)</b>	Vs.	ACIT Circle-5 (1) Room No. G15B, C. R. Building, New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Ananya Kapoor, Adv, Sh. Amarbir Singh Walia, CA &amp; Sh. Utkarsh Kumar Gupta, Adv</b>
<b>Respondent by</b>	<b>Shri Kanav Bali, Sr. D. R.;</b>

<b>Date of Hearing</b>	<b>20.10.2022</b>
<b>Date of Pronouncement</b>	<b>21.10.2022</b>

**ORDER****PER BENCH**

These two appeals are filed by the assessee for assessment years 2009-10 & 2010-11 respectively against the order of the Ld. Commissioner of Income Tax (Appeals)-2, New Delhi [hereinafter referred to as CIT (Appeals)] dated 16/10/2019 & 17/10/2019.

2. Since, the assessee has raised identical grounds in both the appeals which are having identical issues to be decided, both the appeals are clubbed and heard together.

3. The main contention of the counsel for the assessee is that the separate penalty proceedings have been initiated for the A.Y 2009-10 and 2010-11 by issuing a defective notices u/s 274 r.w.s 271(1)(c) of the Act, without mentioning the specific charge and without striking off the irrelevant portion of the notice. Further submitted that, consequent to the said defective notices, the orders u/s 271(1)© have been passed by imposing penalty, which has been confirmed by the Ld. CIT(A). The Ld. Counsel for the assessee has drawn our attention to the notices issued u/s 274 of the Act and also taken us through the various judicial pronouncements and submitted that the penalty imposed by the A.O. deserves to be deleted.

4. Per contra, the Ld. DR submitted that the quantum appeal filed by the assessee has been dismissed by this Tribunal. The assessee has participated in the penalty proceedings and further submitted that mere non mentioning of specific charge or non striking off irrelevant portions in the notice issued u/s 274 of the Act will not vitiate the entire penalty proceedings. Therefore, submitted that, the appeal of the assessee deserves to be dismissed.

5. We have heard the parties, perused the material on record and gave our thoughtful consideration

6. We have perused notice issued u/s 274 read with Section 271 of the Act for both the assessment years 2009-10 and 2010-11. 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 notices issued u/s 274 read with Section 271(1)(c) of the Act for the Assessment Year 2009-10 and 2010-11 are reproduced hereunder:-

A.Y 2009-10

ITNS-29

**Notice Under Section 274 Read With Section 271  
of the Income Tax Act-1961**

To

**M/S BIOTRONIK MEDICAL DEVICES  
Pvt. Ltd.  
101-106, PLOT NO. 14, LOCAL  
SHOPPING COMPLEX, KALKAJI,  
NEW DELHI-110019**

Date **18.03.2013**

Where in the course of proceeding before me for the assessment year **2009-10**  
it appears to me that you:-

\*have without reasonable cause failed to comply with a notice under section 142(1)(143(2) of the Income Tax Act, 1961 dated

✓ \*have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.

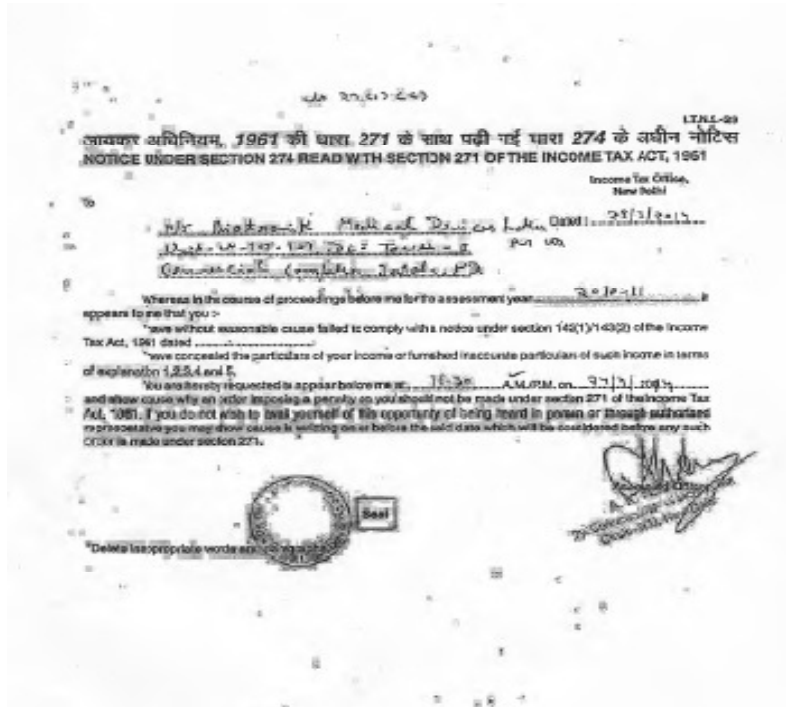
You are requested to appear before me at **11:30 A.M./P.M.** on **01.04.2013**  
and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised 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.

Place **New Delhi**  
Date **18.03.2013**

*[Signature]*  
**Assessing Officer**

\*Delete inappropriate paragraphs and words

A.Y 2010-11



7. 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--vitiating 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 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 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.

10. 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 29.03.2019 for A.Y 2009-10 and the penalty order dated 31.03.2019 for A.Y 2010-11 are hereby quashed. Accordingly, Assessee's Grounds of Appeal in ITA No. 9568/Del/2019 and ITA No. 9800/Del/2019 are allowed.

11. In the result, Appeal filed by the assessee in ITA No. 9568/Del/2019 and ITA No. 9800/Del/2019 are allowed.

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

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

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

Dated : 21/10/2022

*\*R.N\* Sr. PS*

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

