

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1691/Mum/2022
(A.Y. 2014-15)**

Kundanmal Keshrimalji Dhakad, Shop No.14, Ladivala Chambers, Sheikh Memon Street, Zaveri Bazar, Mumbai – 400 002	Vs.	Income-tax Officer, Ward 18(2)(2), Matru Mandir, Tardeo, Mumbai – 400 007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AEEPDP9718G		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sridhar Govind Menon

Date of Hearing	20.10.2022
Date of Pronouncement	26.10.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

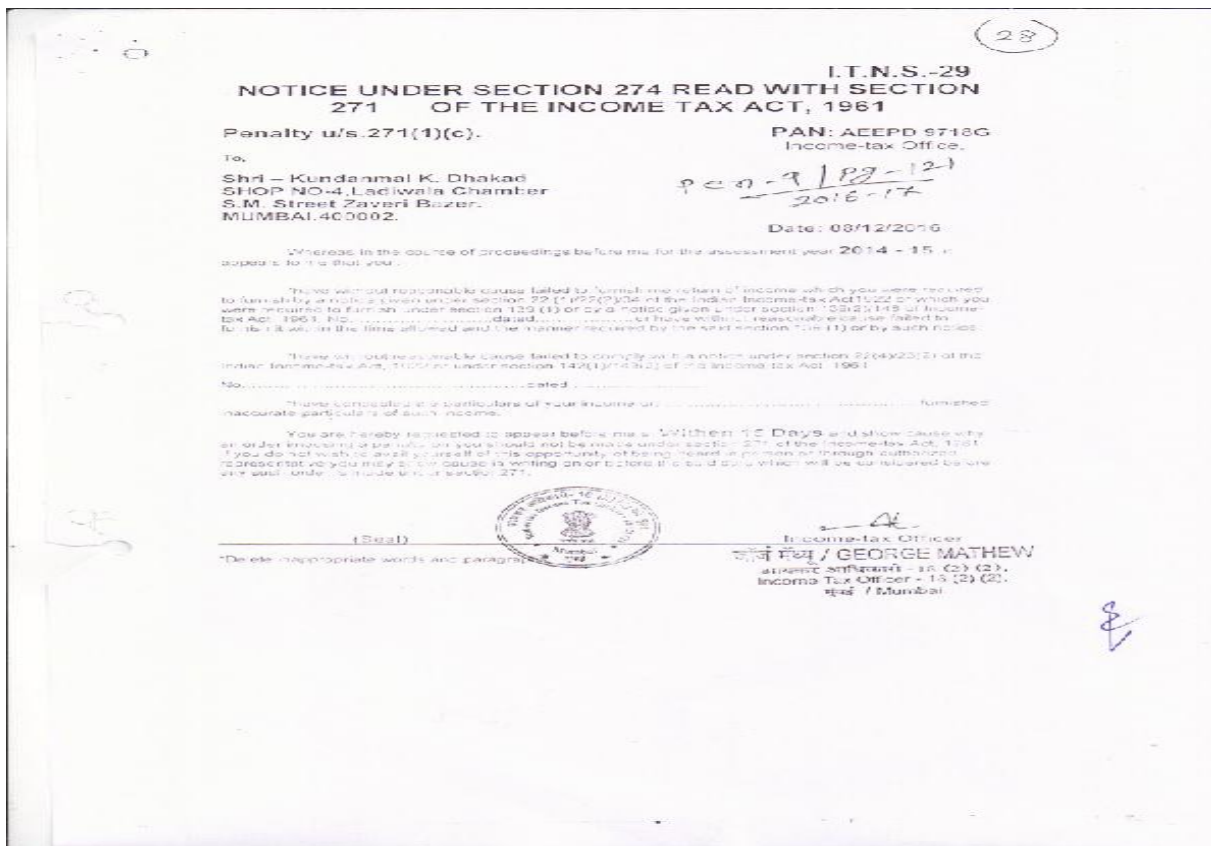
The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi, which in turn arises from the order passed by the A.O u/s 143(3) of the Act. The assessee has raised the following grounds before us:

- “1. The National Faceless Appeal Centre, hereinafter referred to as "NFAC" has erred in deciding the appeal of the appellant ex-parte on 30 April, 2022 ignoring the fact that the adjournment request of the appellant dated 25th April, 2022 requesting for adjournment till 10th May, 2022 was already on records and the same was pending as on the date of deciding the appeal.

2. *Without any prejudice to Ground 1 above, the NFAC has erred in confirming the penalty of Rs. 28,10,537/- levied u/s. 271(1)(c) of the Act without appreciating the fact that the assessing officer has not specified any specific charge under which the penalty is levied. The appellant respectfully submits that there is no valid initiation of penalty proceedings in his case and therefore the order of penalty in pursuance of such invalid proceedings is also invalid.*
3. *Without prejudice to any of the above Grounds, the NFAC has erred in confirming the order levying penalty of Rs.28,10,537/- without appreciating the fact that the impugned addition is based on mere conjectures and suspicions and accordingly it cannot be said that the appellant had either concealed the income or had furnished inaccurate particulars of such income.*
4. *Without any prejudice to any of the above Grounds, the assessing officer has erred in levying penalty in relation to the conditional surrender of income by the appellant during the assessment proceedings. The impugned addition has been made by the assessing officer on the basis of the offer of the appellant and therefore it is not permissible for the assessing officer to levy penalty in relation to such conditional offer.”*

2. The fact in brief is that assessment u/s 143(3) of the Act was completed on 08.12.2016. During the course of assessment the A.O has surrendered the long term capital gain claimed in respect of the script of S.R.K Industries and submitted that as per provisions of IDS scheme he could not declare the income from capital gain, therefore, he had opted to offer the same for taxation during the assessment proceedings as his regular income. Consequently, the A.O has treated the said accommodation entry as income from other source and added the amount of Rs.90,95,589/- to the total income of the assessee and also initiating penalty u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of concealment of income. Thereafter the A.O has levied penalty u/s 271(1)(c) of the Act vide order dated 29.06.2017 to the amount of Rs.28,10,537/- holding that assessee had furnished accurate particulars of his income for the assessment year 2014-15.

3. In the ground of appeal that assessee pointed out that penalty levied in the case of the assessee is not valid since the A.O has not specified any specific charge under which the penalty was levied. We have perused the ground of appeal of the assessee. We have gone through the copy of notice u/s 274 r.w.s 271 of the Act and noticed that A.O has not specified any specific charges under which the penalty was levied. The copy of the notice issue by the A.O dated 08.12.2016 as referred above is reproduced as under:



Along with the copy of notice the assessee has also filed copy of decision of Hon'ble jurisdictional High Court of Bombay in the case of Ganga Iron & Steel Trading Company Vs. CIT (2022) 135 taxman.com 244 (Bom) wherein it is held as under:

“INCOME TAX: Where show cause notice did not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income, same could vitiate penalty proceedings.”

It is demonstrated from the copy of the notice issue du/s 274 r.w.s 271 of the Act, dated 08.12.2016 as supra that in the case of the assessee the A.O had not specified the specific charge as to whether the penalty is proposed for concealment of income or for furnishing of inaccurate particulars of such income. We have considered the decision of Hon'ble jurisdictional High Court in the case of Ganga Iron & Steel Trading Company Vs. CIT (2022) 135 taxman.com 244 (Bom) and the decision of Hon'ble jurisdictional Bombay High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 125 taxmann.com 253 (Bombay), the relevant part of the head note of the decision is reproduced as under:

“Section 271(1)(c), read with section 274 of the Income-tax Act, 1961 - Penalty - For concealment of income (Recording of satisfaction) - Whether where assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), a mere defect in notice-not striking off irrelevant matter would vitiate penalty proceedings - Held, yes - Whether since penalty proceedings culminate under a different statutory scheme that remains distinct from assessment proceedings, therefore, assessee must be informed of grounds of penalty proceedings only through statutory notice - Held, yes - Whether even if notice contains no caveat that inapplicable portion be deleted, it is in interest of fairness and justice that notice must be precise, it should give no room for ambiguity - Held, yes [Paras 181 and 188][In favour of assessee].”

In the case of the assessee the assessing officer has not specifically mentioned in the show cause notice specific charge for which the penalty to be levied, therefore following the decision of the Hon'ble jurisdictional Bombay High Court as supra, we consider that penalty proceedings is not valid. Accordingly, we allow the ground no. 2 of the assessee that penalty proceeding in the case of the assessee was invalid because of not specifying the specific charges under which the penalty was levied. Since, we hold that penalty proceedings are invalid, therefore, other ground of

appeal filed by the assessee are not required any adjudication the same stand dismissed.

4. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.10.2022

Sd/-
(Aby T Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 26.10.2022

Rohit: PS

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 DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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

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