

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM**

आयकर अपील सं/ I.T.A. No.7077/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2010-11)

Shri Magnaram Choudhary Flat No. 304, Building No. B-2/D, Nav Maharashtra Nagar Co-op Society, M. P. Mill Compound, Tardeo, Mumbai-400034.	<b>बनाम/</b> Vs.	ITO-17(2)(3) Matru Mandir, Mumbai.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AINPC0320L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Smt. Mahita Nair (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 10/10/2022

घोषणा की तारीख /Date of Pronouncement: 31/10/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee an individual against the order of the Ld. Commissioner of Income Tax (Appeals)-28 Mumbai dated 03.05.2017 for the assessment year 2010-11 against the penalty confirmed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act").

2. None appeared for the assessee. The ground no. 3 reads as under: -

"In the facts and circumstances of the case and in law, the learned Assessing Officer erred in levying penalty u/s 271(1)(c) without mentioning in the notice u/s 271 r.w.s. 271(1)(c) whether the appellant furnished inaccurate particulars/concealed income which is bad in law.



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3. A perusal of the aforesaid ground reveals that the assessee has assailed the action of the Ld. CIT(A) confirming the penalty u/s 271(1)(c) of the Act without taking into consideration the fact that the notice issued by the AO before imposition of the penalty did not specify the exact fault on which the penalty is proposed to be levied i.e. whether the assessee had furnished inaccurate particulars of income or have concealed the income.

4. In respect of the aforesaid ground of appeal, first of all we have to peruse the show cause notice (SCN) issued by the AO u/s 271(1)(c) r.w.s. 274 of the Act dated 20.12.2012 by which the AO gave notice to the assessee as to why the penalty should not be levied u/s 271(1)(c) of the Act or not. On perusal of the SCN dated 20.12.2012, we note that both the faults specified in Section 271(1)(c) of the Act is given i.e. *“the assessee have concealed the particulars of his income”* or *“furnishing inaccurate particulars of such income”* is found to have been given therein, meaning the AO has put to notice the assessee on both the faults without striking down the inapplicable fault which could have specified which fault AO has found assessee at default i.e. whether the he is proposing penalty for the fault of *“concealment of particulars of income”* or *“for furnishing of inaccurate particulars of income”*. We note that by not striking down one of fault, the assessee was not able to defend properly the charge/fault against which the AO was proposing to levy penalty. In such factual background, the Tribunal has consistently held such notices to be bad in law for not specifying the specific fault for which the assessee being proceeded



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against for levy of penalty. And this action of the Tribunal has been upheld by several judgments of the various High Courts. We note that the Full bench of the Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1 (Bombay) dated 11.03.2021 held that the show cause notice issued prior to levy of penalty without specifying the fault/charge against which the assessee is being proceeded, would vitiate the penalty itself. And thus the Hon'ble High Court upheld the view of the division bench order in the case of PCIT Vs. Goa Dourado Promotions (P.) Ltd. (Tax Appeal No.18 of 2019, dated 26.11.2019) and held that the contrary view taken by an another division bench in the case of CIT Vs. Smt. Kaushalya (1995) 216 ITR 660 (Bom) does not lay down the correct proposition of law.

5. As noted earlier, we find that the penalty notice dated 20.12.2012 did not explicitly convey to the assessee the specific fault/charge the assessee is being proceeded for levy of penalty. Resultantly, the show cause notice is found to be defective/invalid, and therefore it is held to be bad in law. For doing that we also rely on the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-



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*“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’), to be bad in law as it did not specify 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 furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar).*

*4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”*

**6.** Respectfully following the judicial precedents as well as the binding decision of the Full bench of the Hon’ble jurisdictional High Court’s in the case of Mohd. Farhan A. Shaikh (supra), we direct the deletion of the penalty levied in this case.

**7.** In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 31/10/2022.

Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Sd/-

**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 31/10/2022.  
Vijay Pal Singh, (Sr. PS)



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

आदेशानुसार/ BY ORDER,

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