

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

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM**

आयकर अपील सं/ I.T.A. No.4974/Mum/2019

(निर्धारण वर्ष / Assessment Years: 2011-12)

Magestic Premises Pvt. Ltd. 201, 2 <sup>nd</sup> Floor, Oasis Silver Stone, Near Gaganan Maharaj Temple Ram Maruti Road, Thane, West, Thane-400601.	<b>बनाम/</b> Vs.	DCIT, Central Circle-2 Ashar IT Park 6 <sup>th</sup> Floor, Wagle Industrial Estate (W), Thane-400604.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECM5625L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Prateek Jain
Revenue by:	Shri T. Sankar (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 26/07/2022

घोषणा की तारीख /Date of Pronouncement: 29/07/2022

**आदेश / ORDER**

**PER ABY T VARKEY jM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-11, Pune dated 29.02.2016 for the assessment year 2011-12 against the penalty confirmed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the penalty levied by the AO u/s 271(1)(c) of the Act without issuing valid notice (without specifying the fault/charge).

3. At the outset, we note that there is delay of more than 1177 days in filing of this appeal. In the condonation of appeal, the assessee has filed an affidavit wherein the assessee’s director has sworn before the Notary Public and stated that even though the impugned order was passed u/s 153A of the Act, it was handed over to him on 10.03.2016 and he in-turn handed over the same to one of his office staff (Shri



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Amit Prasad) with a direction to hand over the same to authorized representative (CA) for further action (filing of appeal). However, to his astonishment in June, 2019, he came to know that despite his instruction, the order of Ld. CIT(A) was not handed over to the authorized representative; and immediately he directed the staff to trace out the order of Ld. CIT(A) and handed over the same to the authorized representative, who immediately filed the appeal before the Tribunal. In order to substantiate that he has handed over the same to Shri Amit Prasad (employee), we note that the assessee has filed an affidavit of Shri Amit Prasad corroborating the aforesaid facts and admitting his mistake. In the light of the facts and circumstances discerned from both the affidavits, we are of the view that the assessee company should not be penalized for the lackadaisical/negligence of one of its employees. Taking into consideration, that fact that delay of filing the appeal was not deliberate, we are inclined to condone the delay and admit the appeal against levy of penalty u/s 271(1)(c) of the Act.

**3.** We have heard both the parties and perused the records. At the outset, the Ld. AR assailing the action of the AO levying penalty u/s 271(1)(c) of the Act brought to our notice that the show cause notice issued by AO u/s 274 r.w.s 271(1)(c) of the Act dated 25.03.2014 has not spelled out specifically the fault/charge for which the assessee was being proceeded against with the proposed penalty i.e. whether the assessee has “*concealed its income*” or “*furnished inaccurate particulars of such income*”. Having not done so, according to him, the assessee was in the dark as to what fault it has to defend against the proposed penalty. Therefore, according to him, since the show cause



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notice itself is bad in law, the resultant penalty levied is vitiated. For that, he relied on the decisions of 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 wherein their Lordships has 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 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.

4. As noted earlier, we find that the penalty notice dated 25.03.2014 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 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:-

*"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*



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*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 decision of the Hon'ble jurisdiction 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 29/07/2022.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/07/2022.  
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,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai