

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

SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2492/MUM/2022  
(ASSESSMENT YEAR: 2010-11)

Rameshkumar Jawanmalji Sakaria,  
Office No. 2, 23 Nath Nivas,  
7<sup>th</sup> Khetwadi Lane, Mumbai - 400004  
[PAN: ACUPJ3255E]

..... Appellant

Vs

Income Tax Officer,  
Ward 19(3)(1), Mumbai,  
Matru Mandir Building,  
Nana Chow, Opp. Bhatiya Hospital,  
Grant Road (W), Tardev,  
Mumbai - 400007

..... Respondent

Appearances

For the Appellant/ Assessee : Shri Rajesh S. Shah  
For the Respondent/Department : Ms. Megha Bhargav

Date of conclusion of hearing : 30.11.2022  
Date of pronouncement of order : 30.11.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 15.09.2022, passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] in appeal for the Assessment Year 2010-11, whereby the CIT(A) had dismissed the appeal filed by the Appellant against the order, dated 30.10.2018, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') levying penalty of INR 2,38,048/-.

2. The relevant facts, in brief, are that assessment under Section 143(3) read with Section 147 of the Act was framed on the Appellant vide order dated 10.02.2016. Penalty proceedings, under Section 271(1)(c) of the Act were also initiated against the Appellant on this issue as notice, dated 10.02.2016, was issued under Section 274 read with Section 271(1)(c) of the Act. Vide order, dated 30.10.2018, penalty of INR 2,38,048/- was levied on the Appellant.
3. The appeal filed by the Appellant against the penalty order dated 30.10.2018 was dismissed by CIT(A) vide order, dated 15.09.2022.
4. Being aggrieved, the Appellant has filed the present appeal.
5. Before us, the Ld. Authorized Representative of the Appellant submitted that the issue raised in Ground No. 1 in the present appeal is covered in favour of the Appellant by the judgment of the Hon'ble Bombay High Court in the case of **Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum** reported in **434 ITR 1 (Bombay)**, as the penalty notice, dated 10.02.2016, has been issued without deleting or striking off inapplicable part. While the Ld. Departmental Representative relied upon the penalty order to support his case, she fairly acknowledged the fact that the penalty notice has been issued under Section 271 read with 274 of the Act without deleting or striking off inapplicable part.
6. We note that the full Bench of the Hon'ble Bombay High Court in the case **Mohd. Farhan A Shaikh Vs. DCIT (supra)** has held that a mere defect in the notice - not striking off the irrelevant matter,

would vitiate the penalty proceedings. The relevant extract of the aforesaid judgment reads as under:

*“Answers:*

*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(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitate 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(1)(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.”  
(Emphasis supplied)*

7. A perusal of the penalty notice, dated 10.02.2016, issued under Section 274 read with 271 of the Act would show that it in an omnibus show cause notice issued without deleting or striking off the inapplicable part. Similarly, the Assessment Order, dated 10.02.2016, is also vague as it states that “*Proceeding under 274 r.w.s. 271(1)(c) are separately initiated for furnishing inaccurate particulars of income, leading to concealment of income chargeable to tax*’.
8. In view of the above, Ground No. 1 is allowed following the Full Bench decision of the Hon'ble jurisdictional High Court in case of

Mohammed Farhan A Shaikh vs DCIT (supra). The penalty proceedings stand vitiated on account of defect in the penalty notice dated 10.02.2016 issued under Section 274 read with Section 271 of the Act. Accordingly, penalty order, dated 30.10.2018, passed under Section 271(1)(c) of the Act is set aside as being invalid and without jurisdiction.

9. Since, we have decided the Ground No. 1 as above, the need to adjudicate Ground No. 2 and 3 does not arise and the same are disposed off as being infructuous.
10. In the result, appeal filed by the Appellant is allowed for statistical purposes.

Order pronounced on 30.11.2022.

Sd/-  
(Amarjit Singh)  
Accountant Member

Sd/-  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.11.2022  
*Alindra, 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, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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