

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

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

ITA No. 5963/MUM/2019  
(ASSESSMENT YEAR: 2009-10)

Shri Rajkumar Nair,  
D-603, 6<sup>th</sup> Floor, Prashant Apartment,  
Opp. IIT Main Gate, Powai,  
Mumbai - 400076  
[PAN: ADBPN6080F]

..... Appellant

Income Tax Officer,  
Circle 26(2)(5), Mumbai,  
Room No. 605, 6<sup>th</sup> Floor,  
Pratyakshakar Bhavan,  
Bandra Kurla Complex,  
Mumbai - 400051

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri Devdutta Mainkar  
For the Respondent/Department : Ms. Megha Bhargav

Date of conclusion of hearing : 29.11.2022  
Date of pronouncement of order : 27.12.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 31.01.2019, passed by the Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as 'the CIT(A)'] in appeal for the Assessment Year 2009-10, whereby the CIT(A) had dismissed the appeal filed by the Appellant against the penalty order, dated 28.09.2015, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') levying penalty of INR 1,70,025/-.

2. The Appellant has raised the following grounds of appeal:

- “1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the learned AO in not mentioning in the penalty show cause notice as to whether the proceedings are initiated on the ground of concealment of income or on account of furnishing inaccurate particulars of income. The Appellant prays that the impugned penalty order is bad in law and should be quashed.*
- 2. Without prejudice to Ground No. 1 above, on the facts and in the circumstances of the case and also in law, the learned CIT(A) erred in confirming penalty levied amounting to Rs. 1,70,025/- without appreciating that the Appellant had neither concealed particulars of income or furnished inaccurate particulars of income.”*

3. 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 16.03.2015. Penalty proceedings were also initiated against the Appellant on this issue as notice, dated 16.03.2015, was issued under Section 274 read with Section 271(1)(c) of the Act. Vide order, dated 28.09.2015, penalty of INR 1,70,025/- was levied on the Appellant. The appeal filed by the Appellant against the penalty order, dated 28.09.2015, was also dismissed by the CIT(A) vide order, dated 31.01.2019. Being aggrieved, the Appellant has filed the present appeal.

4. Before us, the Ld. Authorized Representative of the Appellant submitted that the issue raised in Ground No. 2 in the present appeal is covered in favour of the Appellant by the full bench 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 16.03.2015, has

been issued without deleting or striking off inapplicable part. Thus, the Appellant has not been informed whether penalty proceedings were initiated for furnishing inaccurate particulars of income or for concealment of income. In response the Ld. Departmental Representative relied upon the assessment order, dated 16.03.2015 and the penalty order, dated 28.09.2015.

5. We note that in the case Mohd. Farhan A Shaikh Vs. DCIT (supra) the full Bench of the Hon'ble Bombay High Court 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)*

6. A perusal of the penalty notice, dated 16.03.2015, 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. Thus, the statutory notice does not provide the ground on which the penalty proceeding has been initiated –

whether the penalty is sought to be levied for furnishing inaccurate particulars of income or for concealment of income. Similarly, the Assessment Order, dated 16.03.2015, is also vague as it states that “...*Penalty proceedings u/s 271(1)(c) of the I.T. Act is initiated by issue of notice u/s 274 r.w.s. 271 of the Act as the assessee has concealed/furnished inaccurate particulars of income.....*” .

7. Thus, the penalty proceedings stand vitiated on account of defect in the penalty notice, dated 16.03.2015, issued under Section 274 read with Section 271 of the Act. Accordingly, penalty order, dated 28.09.2015, passed under Section 271(1)(c) of the Act is set aside as being invalid and without jurisdiction. Therefore, in view of the full bench judgment of the Hon'ble jurisdictional High Court in case of Mohammed Farhan A Shaikh vs DCIT (supra), Ground No. 2 raised by the Appellant is allowed.
8. Since, we have decided the Ground No. 2 as above, the need to adjudicate Ground No. 1 does not arise and the same is disposed off as being infructuous.
9. In the result, appeal filed by the Appellant is allowed.

Order pronounced on 27.12.2022.

*Sd/-*

(Amarjit Singh)  
Accountant Member

*Sd/-*

(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.12.2022  
*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