

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1757/Mum/2022

(A.Y: 2007-08)

ACIT, Central Circle – 1(2)Room No. 906, 9 <sup>th</sup> Floor, Annexe Bldg, Pratistha Bhavan, Church gate, Mumbai – 400020.	Vs.	Late Shri Trikamji A Chatwani 6 <sup>th</sup> Floor, Citi Point, Telli Galli, Andheri (E), Mumbai – 400069
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPC4783G		
Appellant	..	Respondent

Appellant by :	Mr.H.N.Singh.DR
Respondent by :	Mr.Satish Mody.AR

Date of Hearing	18.10.2022
Date of Pronouncement	28.10.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-47, Mumbai passed u/s 271(1)(C) and 250 of the Act. The revenue has raised the following grounds of appeal:

1. On the facts and circumstances of the case, CIT(A) while deleting the entire penalty of Rs.89,79,605/- has failed to consider the fact that quantum addition of Rs.2,37,60,763/- pertaining to HSBC Bank Account IBAN

*...7383 was upheld by CIT(A) in order dated 31.08.2018 and was even enhanced by Rs.5,06,23,304/- and that only quantum addition of Rs.29,16,615/- pertaining to HSBC Bank Account IBAN ...8588 was deleted."*

2. Further the assessee has filed an application under Rule 27 of the ITAT Rules 1963 challenging the validity of issue of notice U/sec 271(1)(C) of the Act.

3. The brief facts of the case are that the assessee derives income from salary, long term capital loss and income from other sources. There was search and seizure action u/s 132 of the Act was conducted in the case of Lalit Jobnputra Group, the Assessing Officer (AO) has information of undisclosed overseas HSBC account of the assessee in the search. Subsequently, notice u/s 153A of the Act was issued. Whereas the assessee has filed the return of income on 14.05.2013 disclosing a total income of Rs.5,15,598/-. Further, the notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued for information in respect of bank account. The AO dealt on the provisions of Sec. 153A of the Act and also the undisclosed foreign bank account of HSBC Geneva and the documents with respect to the transactions found in the course of search and the submissions made by the assessee.

Finally the AO after dealing with all the legal and factual issues made an addition of unaccounted income of Rs.2,37,60,763/- and assessed the total income of Rs. 2,69,85,980/- and passed the order u/s 143(3) r.w.s 153A of the Act dated 30.03.2014.

4. Subsequently the AO has initiated penalty proceedings and issued show cause notice for levying of penalty u/s 271(1)(c) of the Act. Whereas the AO has dealt on the issues of scrutiny proceedings. The assessee has filed reply to the show cause notice explaining the reasons and also the circumstances by letter dated 15.11.2014 referred at Para 6 of the penalty order emphasizing that there is no concealment of income or furnishing of inaccurate particulars of income. The AO was not satisfied with the compliances and explanations filed by the assessee and applied the provisions of Sec. 271(1)(c) of the Act and levied a penalty of Rs. 2,69,38,815/- and passed the order u/s 271(1)(c) of the Act dated 28.11.2014.

5. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A)

has considered the grounds of appeal, submissions of the assessee and findings of the AO in the penalty proceedings and provisions of Sec. 271(1)(c) of the Act and deleted the penalty and allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. DR submitted that that the CIT(A) has erred in deleting the penalty and supported the order of the A.O. Per contra, the Ld. AR supported the order of the CIT(A) and submitted that the application under Rule 27 of the ITAT Rules was filed on the validity of notice issued u/s 271(1)(c) of the Act as the show cause notice does not specify the relevant limb of 271(1)(c) of the Act for levy of penalty and supported the submissions with Honble High Court of Bombay decision.

7. We heard the rival submissions and perused the materials on record. Prima facie, the Ld. AR contentions are that the Notice u/sec 274 r.w.s.271 of the Act issued by the Assessing officer is defective, as it does not mention whether the penalty is levied for

concealment of particulars of income or furnishing inaccurate particulars of income. The Ld. AR has filed the submissions and demonstrated the copy of Notice. Further the Ld.AR also made submissions challenging the validity of notice issued, that the notice issued for levying of penalty is invalid and the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of inaccurate particulars of income. We find the Jurisdictional Honble High Court of Bombay in Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.2021. (2021) 125. taxmann.com 253 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under:

*"180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice ~ and that prevention takes just a tick mark. Prudence demands prevention is better than cure. Answers: Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or*

*the other, or both grounds mentioned in Sec. 271(l)(c), does a mere defect in the notice - not striking off the irrelevant matter vitiate 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 Sec. 271(1)(c) r.w.s. 274 of the 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 deferent 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.*

*182. More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour."*

8. We have considered the facts, circumstances and ratio of the decision of Hon'ble High Court and are of the view that in the A.O has not strike off the charge for levy of penalty for concealment of income or for

furnishing of inaccurate particulars of income. The Ld.DR could not controvert the decision of High Court with any new cogent material evidence or information to take a different view. Accordingly, we quash the penalty notice and accordingly the revenue appeal becomes in fructuous and is dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 28.10.2022

Sd/-  
(PRASHANT MAHARISHI)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 28.10.2022  
KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai