

आयकर अपीलीय अधिकरण
मुंबई पीठ "सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 1026/मुं/ 2013 (नि.व. 2004-05)
ITA NO. 1026/MUM/2013(A.Y.2004-05)

Piramal Enterprises Ltd.,
(Earlier known as Piramal Healthcare Limited)
(Previously known as Nicholas Piramal India Limited)
Piramal Tower, Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013.

PAN:AAACN-4538-P

..... अपीलार्थी /Appellant

बनाम Vs.

The Deputy Commissioner of Income-tax7(1),
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ronak Doshi

प्रतिवादी द्वारा/Respondent by : Shri Jayant Jhaveri

सुनवाई की तिथि/ Date of hearing : 12/10/2022

घोषणा की तिथि/ Date of pronouncement : 06/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai [in short 'the CIT(A)'] dated 23/11/2012 for the Assessment Year 2004-05, confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 [in short "the Act"].

2. The assessee has raised additional ground of appeal vide application dated 18/11/2021. The assessee in additional ground of appeal has assailed

validity of notices issued u/s. 274 r.w.s. 271 of the Act. The additional ground raised in the appeal reads as under:

“1. On the facts and circumstances of the case and in law, the order passed u/s. 271(1)(c) of the Act is void ab initio since the AO has not appropriately struck off the relevant portion of notice u/s 274 r.w.s 271(1)(c) of the Act for initiating penalty proceedings.

2. The Appellant prays that the AO erred in issuing penalty notice issued under section 242 r.w.s 271(1)(c) of the Act is without specifying the exact charge for levy of penalty and passing the levying penalty order pursuant to such invalid notice and thus the entire penalty proceedings to be held as bad in law and the order so passed be quashed.”

3. Shri Ronak Doshi appearing on behalf of the assessee submits that the assessee is raising additional ground of appeal assailing validity of notice dated 29/12/2006 issued u/s. 274 r.w.s. 271(1)(c) of the Act ,as the irrelevant clause of section 271(1)(c) of the Act has not been struck off in the notice, thus, making the said notice void-ab-initio. The Id. Authorized Representative for the assessee submits that the additional ground of appeal is purely legal in nature and no fresh evidence is required for adjudication of the same. The documents necessary for adjudicating additional ground of appeal are already on record, hence, the same may be admitted for hearing. The Id. Authorized Representative for the assessee stated that as of now, he would be confining his submissions only on additional ground of appeal. In case, the assessee succeeds on additional ground of appeal the grounds raised in appeal would become academic.

3.1 The Id. Authorized Representative for the assessee pointed that a perusal of notice dated 29/12/2006 issued u/s. 274 r.w.s. 271 of the Act (at page 1 & 2 of the paper book) would show that the irrelevant limb of section 271(1)(c) of the Act has not been struck off, thus, making the notice

ambiguous. The Full Bench of Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh vs. DCIT, 434 ITR 1/125 taxmann.com 253 has held that where assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in 271(1)(c) of the Act a mere defect in the notice i.e. not striking off of the irrelevant matter would vitiate penalty proceedings.

4. Per contra, Shri Jayant Jhaveri representing the Department vehemently defended the impugned order. The Id. Departmental Representative submits that the assessee has challenged validity of the notice for the first time before the Tribunal. The assessee in the penalty proceedings before the Assessing Officer or before the CIT(A) has never challenged the validity of notice.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also examined penalty notice at page 1 & 2 of the paper book.

6. The assessee has raised additional ground of appeal challenging validity of the notice issued u/s. 274 r.w.s. 271 of the Act on the ground that irrelevant matter in the proforma notice has not been struck off. The additional ground raised by the assessee is purely legal in nature, which goes to the root of validity of penalty proceedings. For adjudication of additional ground of appeal no fresh evidence is required to be adduced as the only document relevant, apart from the assessment order and the order levying penalty u/s. 271(1)(c) of the Act is, the notice. The notice is already on record. Hence, the additional ground raised by the assessee is admitted for adjudication on merits.

7. A perusal of the notice u/s.274 r.w.s. 271 of the Act at page 1 to the paper book clearly shows that the notice has been issued in preprinted performa. The irrelevant matter in the notice has not been struck off by the Assessing Officer while issuing said notice. In the case of Mohd. Farhan A. Shaikh (supra) the Hon'ble Jurisdictional High Court has held that where in the assessment order satisfaction for imposing penalty on one or the other or both grounds mentioned in section 271(1)(c) of the Act are clearly recorded, the defect in the notice – not striking of the irrelevant matter vitiates the penalty proceedings. The relevant observation of Full Bench of the Hon'ble Jurisdictional High Court are reproduced herein below for the sake of completeness.

“179. Besides, the prima facie opinion in the assessment order need not always translate into actual penalty proceedings. These proceedings, in fact, commence with the statutory notice under section 271(1)(c) read with section 274. Again, whether this prima facie opinion is sufficient to inform the assessee about the precise charge for the penalty is a matter of inference and, thus, a matter of litigation and adjudication. The solution, again, is a tick mark; it avoids litigation arising out of uncertainty.

180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may not contain reasons 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 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.*

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.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the correct proposition of law."

Thus, in the facts of the case and the law expounded by the Hon'ble Bombay High Court we find merit in the additional grounds of appeal. Hence, we hold the notice dated 29/12/2006 issued u/s.274 r.w.s. 271 of the Act for Assessment Year 2004-05 is bad in law. Consequently, the subsequent proceedings arising there from are vitiated. The assessee succeeds on additional ground of appeal.

8. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on Friday the 06th day of January, 2023.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 06/01/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

- 1. • अपीलार्थी/The Appellant ,
- 2. • प्रतिवादी/ The Respondent.
- 3. • आयकर आयुक्त(अ)/ The CIT(A)-
- 4. • आयकर आयुक्त CIT
- 5. • विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
- 6. • गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar) /
Sr.Private Secretary
ITAT, Mumbai