

आयकर अपीलीय अधिकरण
मुंबई पीठ " सी ", मुंबई

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं.123/मुं/2023 (नि.व. 2015-16)
ITA NO.123/MUM/2023(A.Y.2015-16)

I.G. International Pvt. Ltd.
802, 8th Floor, Akshar Bluechip Building,
Thane Belapur Road, Turbhe,
Navi Mumbai – 400 705.

PAN: AACCI-2508-Q

..... अपीलार्थी/Appellant

बनाम Vs.

ACIT – Central Circle – 1(3),
9th Floor, Pratishta Bhavan,
Maharshi Karve Road,
Mumbai - 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/ Shri Ashok Mehta &
Dipesh Vora

प्रतिवादी द्वारा/Respondent by : Shri V.S.Mahajan, Sr. A.R

सुनवाई की तिथि/ Date of hearing : 20/04/2023

घोषणा की तिथि/ Date of pronouncement : 30/05/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-47, Mumbai [in short 'the CIT(A)'] dated 14/11/2022 for the Assessment Year 2015-16 confirming penalty u/s. 271(1)(c) of the Income Tax Act, 1961 [in short 'the Act'].

2. Shri Ashok Mehta appearing on behalf of the assessee submitted that the notice dated 31/05/2018 issued u/s. 274 r.w.s. 271(1)(c) of the Act is defective, as both the limbs of section 271(1)(c) of the Act are mentioned therein. The Assessing Officer has not struck off the irrelevant clause in the said notice. To support his contention he placed reliance on the decision of Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh vs. ACIT, 434 ITR 1(Bom-FB).

3. Per contra, Shri V.S.Mahajan representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that assessee had wrongly claimed deduction u/s. 35D of the Act, therefore, penalty u/s. 271(1)(c) of the Act was levied by the Assessing Officer.

4. Both sides heard. Orders of authorities below examined. A perusal of the assessment order dated 26/12/2017 would show that the Assessing Officer has recorded satisfaction for levy of penalty u/s. 271(1)(c) of the Act on the ground of "furnishing inaccurate particulars of income". Thereafter, the Assessing Officer issued notice u/s. 274 r.w.s. 271(1)(c) of the Act, wherein both the limbs of section 271(1)(c) of the Act are invoked i.e. "concealed particulars of income or furnished inaccurate particulars of income". Both the limbs are mentioned with conjunction 'or'. This clearly indicate that , there was an ambiguity in the mind of Assessing Officer while issuing notice as to under which limb notice has to be issued. The Assessing Officer vide order dated 30/06/2018 levied penalty u/s. 271(1)(c) of the Act. A perusal of said order reveals that the Assessing Officer while levying penalty started with the charge of concealment of particulars of income (Para- 2 of order u/s. 271(1)(c) of the Act) and finally levied penalty for furnishing inaccurate particulars of

income (Para-5 of the penalty order). Thus, vagueness regarding the charge for which penalty is to be levied continued to be there in the mind of Assessing Officer right through from recording of satisfaction to levy of penalty. In penal proceedings there is no scope of vagueness. The assessee against whom penalty proceedings are initiated has to be made aware in absolute terms the charges for which the penalty proceedings are initiated. The notice vide which charges for levy of penalty are communicated to the assessee should be unambiguous.

5. The Full Bench of Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh vs. ACIT (supra) has held that mere defect in the notice would vitiate penalty proceedings. In the instant case, vagueness of charge is not only confined to the notice, even in the order passed u/s. 271(1)(c) of the Act vagueness is reflected writ large. Thus, in facts of the case and in light of the decision of Hon'ble Jurisdictional High Court we hold that the notice issued u/s. 274 r.w.s. 271(1)(c) of the Act is defective. Consequently, the subsequent proceedings arising therefrom are vitiated.

6. In the result, impugned order is set-aside and appeal of the assessee is allowed.

Order pronounced in the open court on Tuesday the 30th day of May, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 30/05/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

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