

अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'B' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **3542 & 3543/CHNY/2018**

निर्धारण वर्ष /Assessment Years: 2006-07 & 2007-08

**The Estate of (Late) Shri B.H. Kothari,**  
Rep. by Legal Heir Smt. Nina Kothari,  
No.18, Kothari Bagh,  
Mahatma Gandhi Road,  
Nungambakkam,  
Chennai – 600 034.

**The DCIT,**  
v. Corporate Circle 4(2),  
Chennai – 34.

**PAN: AGJPK 7393K**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Vijayaraghavan, Advocate  
: Shri S. Senthil Kumaran, CIT

सुनवाई की तारीख/Date of Hearing : 20.06.2023

घोषणा की तारीख/Date of Pronouncement : 23.06.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

These appeals filed by the assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-8, Chennai in ITA Nos.117 & 118/17-18 dated 04.10.2018. The penalty order was framed by the DCIT, Corporate Circle 4(2), Chennai for the assessment years 2006-07 & 2007-08 u/s.271(1)(c)

of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 07.02.2018.

2. In these two appeals of assessee, the assessee has raised additional ground on the issue that the notice u/s.274 r.w.s.271(1)(c) of the Act proposing to levy penalty u/s.271(1)(c) of the Act does not specifically state whether it was initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income and has not strike off the appropriate clause.

The assessee has raised following additional grounds:-

1. The levy of penalty is required to be quashed as notice proposing to levy penalty under Section 271(1)(c) does not specifically state whether it was initiated for concealment or for furnishing inaccurate particulars.

2. A notice which does not specify the default of assessee on which penalty was initiated was invalid, the consequential levy of penalty should be deleted as held in the following decisions:-

- i. Shri Babuji Jacob vs. ITO, TCA No.39 of 2019 dated 08.12.2020.
- ii. CIT v. Manjunatha Cotton and Ginning Factory, 359 ITR 565
- iii. CIT v SSA Emerald Meadows (Kar) H C affirmed by the Hon'ble Supreme Court in the case of CIT v SSA Emerald Meadows CC No.11485 of 2016 dt 05.08.2016

3. The Id.counsel for the assessee stated that for both the assessment years i.e., for AYs 2006-07 & 2007-08, the AO has issued notice u/s.271(1)(c) of the Act on 31.03.2013. He argued that the relevant notice u/s.274 r.w.s. 271(1)(c) of the Act dated

31.03.2013 does not specify whether it was initiated for concealment of particulars of your income or for furnishing inaccurate particulars of such income. A notice which does not show the default for which the assessee was required to explain was held as invalid notice and particularly by the Hon'ble Madras High Court in the case of Shri Babuji Jacob vs. ITO in Tax Case Appeal No.39 of 2019 dated 08.12.2020 following the decision of Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565 and also Full Bench decision of Hon'ble Bombay High Court in the case of Mohd.Farhan A. Shaikh vs. DCIT, (2021) 434 ITR 1. Once this issue is settled by various High Courts, the assessee raised this legal issue which goes to the root of the matter and there was omission to raise this specific ground because this issue got crystallized when the Full Bench of Bombay High Court in the case of Mohd.Farhan A. Shaikh, *supra*, has considered this issue. The assessee for admission of additional ground relied on the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., 229 ITR 383. He argued that this being purely legal issue and going to the root of the matter requires no further investigation of facts because all the facts are available on the file of the AO because notice issued by him which is u/s.274 r.w.s. 271(1)(c) of the Act.

4. On the other hand, the Id.CIT-DR opposed the admissibility of additional ground for the reason that the assessee was made aware of the initiation of penalty proceedings during the course of hearing of penalty proceedings and he was apprised of the fact on which issue the penalty is being levied. The Id.counsel for the assessee simply stated that the assessee is very much aware that the penalty u/s.271(1)(c) of the Act is initiated at the time of assessment itself vide assessment order dated 31.03.2013. The Id.CIT-DR argued that this is a case of concealment of income and assessee was provided reasonable opportunity and he attended the proceedings before the AO and hence, now he cannot turn around and tell that he was not made aware for which charge the penalty was initiated by the notice issued u/s.274 r.w.s. 271(1)(c) of the Act.

5. After hearing rival contentions and going through the factum of the issue that the notice issued u/s.274 r.w.s. 271(1)(c) of the Act dated 31.03.2013 does not specify for which charge the penalty u/s.271(1)(c) of the Act is initiated whether for concealment of particulars of income or furnishing of inaccurate particulars of income because in that notice both the clause are there and not strike off the irrelevant clause. Hence, we admit this legal ground for the reason that the facts are available on record and this being

purely legal issue goes to the root of the matter. Since, there is no need to investigate in to the facts of the case, as the facts are available on record of the Revenue as well as of the assessee, we admit this legal issue and will adjudicate.

6. At the outset, the Id.counsel for the assessee stated that this legal issue is covered in favour of assessee and against Revenue by the following decisions:-

- 1) Hon'ble Madras High Court in the case of Shri Babuji Jacob vs. ITO, TCA No.39 of 2019 dated 08.12.2020.
- 2) Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565
- 3) Hon'ble High Court of Bombay in the case of Mohd.Farhan A. Shaikh vs. DCIT, 434 ITR 0001.

He referred to the Memorandum of Additional Grounds, whereby the assessee had enclosed the copy of notice issued u/s.274 r.w.s. 271(1)(c) of the Act dated 31.03.2013 at page 3 and the AO while issuing this notice has not strike off the irrelevant clause i.e., 'have concealment of particulars of your income or furnished inaccurate particulars of such income'. It means, according to Id.counsel both the charges are there in the notice and notice does not specify the

charge and hence, as held by Hon'ble Jurisdictional High Court in the case of Shri Babuji Jacob, *supra*. The Id.counsel for the assessee also drew our attention to this decision and argued that even the decision of Sundaram Finance Ltd., vs. ACIT, (2018) 93 Taxmann.com 250 was distinguished vide para 32 & 33 of the judgment as under:-

32. The decision of this Court in the case of Sundaram Finance Ltd., was couched on a different factual position wherein the Court rejected the plea of the assessee, which was a limited company, when they raised an argument with regard to the validity of the notice for the first time before the High Court and considering the administrative set up of the said assessee and the fact that the assessee was never prejudiced on account of the alleged defect, the Court rejected the argument of the assessee.

33. In the case on hand, we find that at the first instance, while replying to the penalty show cause notice dated 30.3.2016, the assessee raised a specific plea that there was no concealment of income, that he had not furnished inaccurate particulars of income and that the notice was not proper. Therefore, the phraseology, which was adopted by the assessee, if read as a whole, would clearly show that he had objected to the issuance of the notice and as there was no basis for issuance of the notice under Section 271(1)(c) of the Act, both limbs in the said provision do not get attracted. Hence, the decision of this Court in the case of Sundaram Finance Ltd., cannot be applied.

7. On the other hand, the Id.CIT-DR relied on the submissions filed by him vide dated 19.06.2023 and the relevant submissions read as under:-

The assessee filed additional grounds of appeal dated 19/4/2022 and submitted that "the levy of penalty is required to be quashed as the notice proposing to

levy penalty u/s.271(1) (c) does not specifically state whether it was initiated for concealment (or) furnishing inaccurate particulars. Further, the assessee submitted that this is a legal issue and hence the additional ground may be admitted.

B. The additional ground raised by the assessee may not be admitted, since it does not involve substantial questions of law. It is submitted that Section 274 of the Income Tax Act deals with the procedure for the levy of various penalties as per Chapter XXI of the Income Tax Act. As per sec.274(1) of the Income Tax Act, it is stated as under:

*274(1) " No order imposing a penalty under this chapter shall be made unless the assessee has been heard, (or) has been given a reasonable opportunity of being heard"*

Hence, it is clear that the AO has to hear the assessee before levying of penalty by way of giving a reasonable opportunity of being heard. In the Instant case, the assessee was given the opportunity of being heard by way of issuance of the penalty notice, even though section 274 of the Act did not prescribe any statutory notice. In response to the said notice, the assessee has appeared before the AO and has explained in detail on non-applicability of concealment of income vide its letter dated 11/3/2017.

It is notable from the penalty order of the AO dated 7/2/2018, page 6/para 'd' that, the assessee clearly understood that the penalty notice issued by the AO dated 31/3/2013 is for the purpose of concealment of income. It is worth mentioning here that even though the original penalty notice was issued on 31/3/2013, the assessee has not raised any objection against such notice before the AO, prior to the conclusion of the penalty order, which is almost 5 years from the initiation of the penalty proceedings.

In view of the above facts, it is clear that section 274 of the Act deals with the procedure for the levy of various penalties and hence the issuance of notice u/s.274 of the Act by the AO is non-statutory in nature. If some confusion/non-clarity in the penalty notice issued by the AO during the stage of proceedings, the assessee can always get it clarified at that stage. Whereas, in the instant case, the assessee has understood the reason for initiation of penalty clearly and replied accordingly during the penalty proceedings before the AO. Hence, the assessee did not raise any such issue before the CIT(A) also.

It is also submitted that the additional ground raised by the assessee is entirely factual and no substantial question of law arises as per the decision of Hon'ble Madras High Court in the case of M/s. Sundaram Finance Ltd. Vs ACIT (403 ITR 407), which held that "the additional substantial question of law, which was framed is rejected on the ground that on facts the said question does not arise for consideration as well as for the reasons set out by us in the preceding paragraphs".

C. Non-striking of inapplicable portion cannot by itself invalidate Notice u/s.274 of the Act.

As per the following decisions of various judicial forums, non-striking of irrelevant parts of the notice cannot invalidate the notice issued u/s.274 of the Act.

(i) The Hon'ble Madras High Court in the case of M/s.Ventura Textiles Ltd. Vs CIT (ITA No.958 of 2017 dated June 12, 2020) has held that "it would be too technical and pedantic to take the view that because in the printed notice the inapplicable portion was not struck off, the order of penalty should be set aside".

(ii) The Hon'ble Bombay High Court in the case of CIT Vs Smt.Kaushalya (216 ITR 660) has held that a mere mistake in the language used (or) mere non-striking of inaccurate portion cannot by itself invalidate notice u/s.274.

(iii) As per the decision of Hon'ble Madras High Court in the case of M/s. Sundaram Finance Ltd. Vs ACIT (403 ITR 407) has held that the defect in the notice, had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued u/s.274 r.w.s.274 of the Act". In the instant case, as stated in para-B, has clearly understood the purport and import of notice issued.

(iv) As per the decision of Hon'ble ITAT, Chennai, in the case of M/s. TVS Supply chain Solutions Ltd. Vs ACIT vide ITA No.585/CHNY/20 19 dated 31/8/2021 has held that "there is no such plea raised by the assessee before the AO at the initial stage. Hence, the notice issued u/s. 271(1)© of the Act is a valid notice, and therefore, the ground raised by the assessee is not acceptable". In the instant case, the assessee never raised this issue neither before the AO nor before the CIT(A). Hence, the additional ground raised by the assessee is not acceptable.

(v) As per the decision of Hon'ble Himachal Pradesh High Court in the case of M/s. H.P. State Forest Corporation Ltd. Vs CIT (267 ITR 285) has held that "whether notice mentioned that it was being issued under clause (a) or clause (aa) of Sec.273(2) in as much as after issuance of the notice, the assessee having full knowledge, participated in proceedings and ultimate order of imposition of penalty was passed after affording an opportunity to assessee of being heard, the levy of penalty is valid".

(vi) The Hon'ble ITAT, Chennai in the case of Shri Durga Das Vyas Vs ITO in ITA No.867 to 872/Mds/2014 dated 23/3/2017 has remitted the matter back the issue to AO for giving reasonable opportunity of being heard (para 11) on the similar circumstances.

7.1 In view of the above submissions, Id.CIT-DR argued that the provisions of section 274 of the Act deals with the procedure for the levy of various penalties and hence, issuance of notice u/s.274 of the Act by the AO is non-statutory in nature which has not been considered by any of the High Court including Madras High Court. Even, he argued that the assessee is aware or he has understood the reasons for initiation of penalty clearly and replied accordingly during the penalty proceedings before the AO. In term of the above, Id.CIT-DR stated that the additional ground be rejected and this legal issue be dismissed.

8. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the notice u/s.274 r.w.s. 271(1)(c) of the Act which is enclosed in assessee's

memorandum of additional grounds at page 3 clearly proves that the Revenue is not sure about the charge on which the penalty for concealment of income is to be levied u/s.271(1)(c) of the Act. We noted that the AO while issuing notice dated 31.03.2013 has not strike off the irrelevant clause i.e., clause 'c' where both the charges are mentioned as "*Have concealed the particulars of your income or \_\_\_\_\_ Furnished inaccurate particulars of such income.*" This issue has been considered by the Full Bench of Hon'ble Bombay High Court in the case of Mohd.Farhan A. Shaikh, *supra*, wherein it is clearly answered that the defect in the notice vitiates the penalty and the primary burden lies on the Revenue. The Hon'ble Bombay High Court noted that penalty proceedings translates into action only through notice issued u/s.271(1)(c) r.w.s. 274 of the Act. The penalty proceedings must stand on its own and therefore the assessee must be informed of the ground or charge for levy of penalty. According to Hon'ble Bombay High Court, an omnibus notice suffers from the vice of vagueness. Even the argument of Id.CIT-DR that the notice u/s.274 of the Act is non-statutory notice, this has been considered by Hon'ble Bombay High Court in para 20 & 21 as under:-

20. The mandate of law, Ms. Razaq points out, is that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. She agrees that the principles of natural justice

stand ingrained in the section. According to her, the penalty proceedings have their foundation in the assessment proceedings. In other words, when the stage for imposition of penalty is reached, the assessee already comes to know the charge against him: whether he is being penalised for concealing the particulars of his income or for furnishing inaccurate particulars of the income.

21. According to Ms. Razaq, the authority concerned applies his mind when he passes the assessment order. So, the form in which the notice is issued for imposing penalty loses its significance. As an example of an 'extreme case', she would submit that if a notice is perfect but it fails to disclose the mind of the assessing authority, the otherwise perfect notice serves no purpose. In this context, Ms. Razaq submits that there is no particular form prescribed for the notice to be issued under section 274 of the IT Act. Only by way of abundant caution, does the Revenue circulate the format. And merely because a particular clause has not been ticked off or struck out, it does not, and should not, result in any prejudice, offending the principles of natural justice. Relying on a plethora precedents, Ms. Razaq submits that unless prejudice or injustice is pointed out, mere technical infraction of law would not vitiate an enquiry or any order or result of any proceedings. And in judging the question of prejudice, according to Ms. Razaq, the Court must act with a broad vision.

Finally the Hon'ble Bombay High Court answered this vide para 179 to 183 & 188 as under:-

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(l)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiating 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

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188. We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays nonapplication of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

8.1 As the issue is squarely covered in favour of assessee, we held the notice issued u/s.274 r.w.s. 271(1)(c) of the Act in both the years as defective and hence, liable to be quashed. We quash the notices and additional ground raised is accordingly allowed.

9. Since, we have adjudicated the issue on assumption of jurisdiction and held the issue in favour of assessee, we refrain ourselves from adjudicating the issues on merits.

10. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 23<sup>rd</sup> June, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 23<sup>rd</sup> June, 2023

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

***RSR***

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.