

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No. 999/Mum/2022

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Chevron Metal Products Pvt. Ltd. 22-A Panton Bunder Road, Near, Britannia Darukhana, Raey Road, Mumbai- 400010.	बनाम / Vs.	ACIT, Central Circle 8(2) Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AAACC2190E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Anil Gupta (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 26/05/2023

घोषणा की तारीख /Date of Pronouncement: 30/06/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-50, Mumbai dated 21.03.2022 for the assessment year 2011-12.

2. This is second round of litigation. Since the aforesaid appeal was heard along with ITA. Nos. 1000 & 1001/Mum/2022 and order pronounced on 29.11.2022, however, by way of an M.A, it was brought to our notice that we have not passed the order in ITA. No. 999/Mum/2022 for AY 2011-12, so, we have recalled our order (supra) for the limited purpose for adjudicating the penalty appeal in ITA. No. 999/Mum/2022. Therefore, we proceed to decide the appeal.

3. The assessee has challenged the penalty levied by AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act"). The main grievance of the assessee is against the action of the Ld. CIT(A) levying penalty u/s 271(1)(c) of the Act without issuing a valid notice,



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and for that has filed the copy of the notice issued by the AO dated 29.03.2014 u/s 274 r.w.s 271 of the Act. A copy of which is found placed in the record. On perusal of the same reveals that AO has not stricken down the in-applicable portion of the notice *viz* as to whether the notice was issued against the assessee for (i) Concealing the particulars of assessee's income (ii) or furnishing inaccurate particulars of such income. Since we note that both the faults have been spelled out without striking down the in-applicable faults on which assessee has been put to notice for levy of penalty u/s 271(1)(c) of the Act, we find that assessee was in the dark as to what fault it has committed for which the AO proposed to levy penalty and for which it has to defend/explain against the proposed penalty. Therefore, since show-cause notice does not spell out clearly as to what fault assessee is being proceeded against for levy of penalty, the notice itself is bad in law, and consequently the penalty levied is vitiated. For that, we rely on the decisions of the Full bench of the Hon'ble Jurisdictional of High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1 (Bombay) dated 11.03.2021 wherein their Lordships has held that the show cause notice issued prior to levy of penalty without specifying the fault/charge against to which the assessee is being proceeded against would vitiate the penalty itself. And thus the Hon'ble Court upheld the view of the division bench order in the case of PCIT Vs. Goa Dourado Promotions (P.) Ltd. (Tax Appeal No.18 of 2019, dated 26.11.2019) and held that the contrary view taken by an another division bench in the case of CIT Vs. Smt. Kaushalya (1995) 216 ITR 660 (Bom) does not lay down the correct proposition of law.



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4. As noted earlier, we find that the specific fault/charge against which the assessee was called upon to explain vide the notice dated 29.03.2014 did not explicitly convey to the assessee for which fault/charge the assessee is being proceeded against. Resultantly, the show cause notice is found to be defective/invalid, and therefore it is held to be bad in law. For doing so, we also rely on the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-

"3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act'), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar). 4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."



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5. Respectfully following the judicial precedents as well as the binding decision of the Full bench decision of the Hon'ble jurisdiction High Court's in the case of Mohd. Farhan A. Shaikh (supra), we direct the deletion of the penalty levied in this case.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 30/06/2023.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 30/06/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai