

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1024/Del/2023
(ASSESSMENT YEAR 2001-02)**

**ITA No.1025/Del/2023
(ASSESSMENT YEAR 2004-05)**

**ITA No.1026/Del/2023
(ASSESSMENT YEAR 2005-06)**

**ITA No.1027/Del/2023
(ASSESSMENT YEAR 2006-07)**

**ITA No.1028/Del/2023
(ASSESSMENT YEAR 2007-08)**

**ITA No.1029/Del/2023
(ASSESSMENT YEAR 2008-09)**

**ITA No.1030/Del/2023
(ASSESSMENT YEAR 2009-10)**

**ITA No.1031/Del/2023
(ASSESSMENT YEAR 2010-11)**

**ITA No.1032/Del/2023
(ASSESSMENT YEAR 2011-12)**

**ITA No.1033/Del/2023
(ASSESSMENT YEAR 2012-13)**

Himanshu Malhotra (through legal heir of late Sh. Ashok Malhotra) House No.1310 Dr. Mukherjee Nagar Delhi-110 033 PAN-AAPPM 8352G (Appellant)	Vs.	Asst.CIT Circle-14 New Delhi (Respondent)
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Appellant by	Mr. Nitin Gulati and Mr.Amol Sinha, Advocates
Respondent by	Mr. K.K.Mishra, Sr. DR
Date of Hearing	04/07/2023
Date of Pronouncement	10/07/2023

ORDER

PER BENCH:

The captioned appeals have been filed by Assessee against the separate orders dated 16/09/2020, 17/09/2020, 02/09/2020 and 02/09/2020 passed by the Learned Commissioner of Income Tax (Appeals)-30, New Delhi [“Ld. CIT(A)”, for short], for Assessment Years 2001-02, 2004-05 to 2012-13 respectively.

2. Since, the issues involved in all these appeals are common in nature; hence, they are clubbed together and disposed off by this common and consolidate order for the sake of convenience.

3. The assessee has raised following common grounds(except differences in the amount).

- 1. That Learned Commissioner (Appeals) has upheld the order of the Assessing Officer which is Bad in law, non-speaking order, no justification provided and no notice has been issued.*
- 2. That Learned commissioner appeals has upheld the order where Assessing Officer has not specified Concealment of Income or furnishing inaccurate particulars under Section 271(1)(c).*
- 3. That Learned commissioner appeals has upheld the order where Assessing officer has provided no reasonable opportunity before imposing penalty.*

- 4. That Learned commissioner appeals has upheld the order where Assessing Officer has levied penalty on estimated additions which is not correct. Therefore the order is liable to be deleted.*
- 5. That Learned commissioner appeals has upheld the order where Assessing officer has levied Penalty on deceased person which is unlawful.*
- 6. That Learned commissioner appeals has upheld the order where Assessing Officer where he has increased income to maximum level which is not correct.*
- 7. That Learned commissioner appeals has upheld the order where Assessing Officer has made additions not based on any document.*
- 8. That Learned commissioner appeals has upheld the order where Reopening is bad in law.*
- 9. That Learned commissioner appeals has upheld the order ignoring that No penalty can be imposed on time barred assessment order.*
- 10. That Learned commissioner appeals has upheld the order ignoring that Reopening is based on surmises.*
- 11. That Learned commissioner appeals has upheld the order where Recommendations of special audit not as per law and facts.*
- 12. That Learned commissioner appeals has upheld the order where Completion of reassessment is barred by limitation.*
- 13. That Learned commissioner appeals has upheld the order where Assessing Officer has imposed Penalty on account of income from undisclosed sources amounting to Rs.662,698/-which is not as per law and is liable to be deleted.*
- 14. That Learned commissioner appeals has upheld the order where Assessing officer has imposed penalty on account of purchase of car of Rs.8,23,300/- is not as per law and is liable to be deleted Penalty on addition of Rs.8,23,300/-.*
- 15. 15. That Learned commissioner appeals has upheld the order where Assessing officer has imposed penalty on account of bank deposits is not*

as per law and is liable to be deleted Penalty on addition of Rs.13,30,496/-.

16. *That Learned Commissioner appeals has upheld the order where Assessing Officer imposed penalty on account of household expenses is not as per law and is liable to be deleted. Penalty on addition of rs.18 Lakhs.*
17. *Appellant pray for leave to add, alter, modify and withdraw any of the grounds either before time of hearing.*

4. Since the issues involved in the above appeals have identical and considering the fact that the ld. CIT(A) has dealt and decided the issue involved in the Assessment Year 2001-2002 and followed the said decision in other Assessment years, for the sake of convenience, the brief facts of the case of Assessment Year 2001-2002 are taken for consideration which are as follows:-
The assessment was completed u/s 143(3) read with Section 147 of the Income Tax Act ('Act' for short) in the case of Sh. Ashok Malhotra and the reassessment was subject to revision vide order dated 30/03/2011 u/s 263 of the Act. In pursuance to the order u/s 263 of the Act, the reassessment was completed on 15/12/2011 u/s 253/143(3) of the Act against Sh. Ashok Malhotra at the income of Rs. 48,98,880/- against returned income of Rs. 2,82,384/- by making following additions:-

S. No.	Nature of addition	Amount (Rs.)
1.	Income from undisclosed sources	6,62,698
2.	Purchase of car	8,32,300
3.	Unexplained deposits in bank	13,30,496
4.	Unexplained household expenses	18,00,000
Total		48,98,880/-

5. Pursuant to the assessment order dated 05/12/2011, the A.O. initiated separate penalty proceedings u/s 271(1)(c) of the Act and notice u/s 274 of the Act was issued on 14/03/2012 asking Sh. Ashok Malhotra to show cause as to why penalty should not be imposed. The penalty proceedings were kept in abeyance as the assessee had filed an appeal against the assessment order. It is found that the said sh. Ashok Malhotra died on 30/06/2016 but the penalty order u/s 271(1) (c) came to be passed on 31/03/2017 against Sh. Ashok Malhotra. Similar penalty orders have been passed on 31/03/2017 against Sh. Ashok Malhotra by the A.O. for the Assessment Year 2004-05 to 2012-13.

6. Aggrieved by the orders of the penalty dated 31/03/2017 for Assessment Year 2001-02, 2004-05 to 2012-13, passed against Sh. Ashok Malhotra, the legal heirs of Sh. Ashok Malhotra filed appeals before the CIT(A) challenging the orders of the penalty. The ld. CIT(A) vide order dated 25/02/2019, dismissed the Appeals filed by the legal heirs of the assessee. Aggrieved by the order dated 25/02/2019 passed by the CIT(A), the heirs of the assessee preferred the above captioned Ten Appeals on the grounds mentioned above.

7. The Ld. Counsel for the assessee vehemently submitted that the orders of the penalty have been passed on 31/03/2017 against the dead person whereas Sh. Ashok Kumar Malhotra died on 30/06/2016 itself, thus, the order passed against dead person is having effect of 'nullity'. Further, submitted that the penalty proceedings initiated without specifying the specific limb of the penalty to be initiated against the assessee either in the assessment order or in the

notice issued u/s 274 of the Act, therefore, submitted that the penalty imposed by the A.O. deserves to be deleted.

8. We have heard the parties, perused the material. It is found that pursuant to the reassessment order passed on 05/12/2011 u/s 253/143 (3) of the Act, the penalty proceedings u/s 271(1)(c) of the Act have been initiated against Sh. Ashok Malhotra by issuing show cause notice dated 14/03/2012 it is also undisputed fact that on 30/06/2016 Sh. Ashok Malhotra passed away. The order of penalty came to be passed against a dead person on 31/03/2017. It is the specific case of the Department that the Department has not been informed regarding the death of the assessee, therefore the order against the dead person came to be passed. It is well settled law that an order cannot be passed against dead person and the order passed against dead person is null and void, irrespective of the fact that the officer who passed the order had the knowledge of the death of the assessee or not.

9. As per section 159(2) of the Act, mere initiation of penalty proceeding correctly is not sufficient, but the same should be completed and the order of the penalty should be passed in accordance with the said provisions. In other words, any proceedings initiated against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of death of the deceased. Therefore, when the penalty orders were passed against Sh. Ashok Malhotra, he had already died. Thus the penalty

order is invalid and having the effect of nullity. In support of the above proposition, we rely on the following judicial pronouncements:-

(i) The Hon'ble Supreme Court in the case of ITO v. Bhupendra Bhikhalal Desai [2021] 131taxmann.com 40 (SC) held that:

SLP dismissed against High Court's ruling that notice issued under section 153C against dead person is unenforceable in law and in such case revenue cannot contend that as they have no knowledge about death of assessee, they are entitled to plead that notice is not defective.

(ii) The Hon'ble Apex Court in the case of ITO Ward 1(3)(7), Surat v. Durlabhbai Kanubhai Rajpara [2020] 114 taxmann.com 482 (SC) held that:

Where High Court set aside reassessment proceedings on ground that no valid notice under section 148 could be issued against a dead person, SLP filed against said order was to be dismissed.

(iii) The Hon'ble High Court of Gujarat in the case of Krishnaawtar Kabra v. ITO [2022] 140 taxmann.com 423 (Gujarat) held that:

Reopening notice under section 148 issued upon deceased assessee was void ab initio and therefore, consequential proceedings and orders passed thereon were without any jurisdiction and were to be quashed and set aside.

(iv) The Hon'ble High Court of Jharkhand in the case of Sandeep Chopra v. PCIT [2023] 149 taxmann.com 225 (Jharkhand) held that:

Where during original assessment proceeding itself, original assessee died and AO was well-informed of same, reopening notice issued in name of deceased assessee on his PAN and not in name of his legal representative was held to be illegal and all consequential orders passed pursuant to notice would be non est and was to be quashed.

(v) The Hon'ble Delhi High Court in the case of Vikram Bhatnagar v. ACIT [2023] 147 taxmann.com 254 (Delhi) held that:

Where it was duly disclosed in return that it was filed by legal representative of deceased assessee, jurisdictional notice issued against deceased assessee and assessment order passed against dead person on his PAN without bringing on record all legal representatives would be null and void and was to be set aside

(vi) The Hon'ble High Court of Madras in the case of K. Suresh v. ACIT, Non-Corporate Circle-1, Chennai [2021] 129 taxmann.com 67 (Madras) held that:

Where factum of demise of mother of assessee was communicated to Assessing Officer by assessee, impugned reopening notice issued and subsequent reassessment order passed thereafter in name of mother of assessee and bringing on record assessee as a legal representative for all tax dues were invalid.

10. Further, it is also observed that in the assessment order as well as in the show cause issue notice u/s 274 of the Act, the specific limb of the penalty to be initiated against Sh. Ashok Malhotra has not been mentioned. In the assessment order passed u/s 253/143(3) of the Act, it has been mentioned as under:-

“Penalty notice u/s 271(1)(c) is being issued separately for concealment of income/furnishing inaccurate particular of income as discussed above.”

Whereas in the penalty show cause notice issued u/s 274 read with Section 271 of the Act, it has been mentioned as under:-

***“* have concealed the particulars of your income
.....Furnished inaccurate particulars of such
income.”***

Thus, it was not clear as to whether the penalty proceedings have been initiated for concealment of income or furnishing of inaccurate particulars of income.

11. The identical issue as to whether ‘the order of the penalty is sustainable which was initiated by issuing a defective notice without striking off irrelevant limb and without specifying the charge for which notice was issued?’ has been decided by the Hon'ble Bombay High Court (full bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT [434 ITR (1)] and the Hon'ble High Court held as under:-

"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--vitiates 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(l)(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 Kaushaiya does not lay down the correct proposition of law.

Question No.2: Has Kaushaiya failed to discuss the aspect of 'prejudice?'

184. Indeed, Kaushaiya did discuss the aspect of prejudice. As we I.T.A.No.1409/Del/2016 have already noted, Kaushaiya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushaiya, "fully knew in detail the exact charge of the Revenue against him". For Kaushaiya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, "the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went onto observe that for sustaining the plea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Kaushaiya does the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done ",

185. No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under section 274. So asserts Kaushaiya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.

186. That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers. Kaushaiya's insistence that the previous proceedings supply

justification and cure the defect in penalty proceedings has not met our acceptance.

Question No. 3: What is the effect of the Supreme Court's decision in Dilip N. Shroff on the issue of non-application of mind when the irrelevant portions of the printed notices are not struck off ?

187. In Dilip N. Shroff, for the Supreme Court, it is of "some significance that in the standard Pro-forma used by the assessing officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done". Then, Dilip N. Shroff, on facts, has felt that the assessing officer himself was not sure whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars.

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 I.T.A.No.1409/Del/2016 ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays non application of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

189. In Sudhir Kumar Singh, the Supreme Court has encapsulated the principles of prejudice. One of the principles is that "where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to

invalidity of the orders passed. Here again, prejudice must be caused to the litigant, "except in the case of a mandatory provision of law which is conceived not only in individual interest but also in the public interest".

*190. Here, section 271(l)(c) is one such provision. With calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling with or dilution. For a further precedential prop, we may refer to *Rajesh Kumar v. CIT*[74], in which the Apex Court has quoted with approval its earlier judgment in *State of Orissa v. Dr. Binapani Dei*[75]. According to it, when by reason of action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice must be followed. In such an event, although no express provision is laid down on this behalf, compliance with principles of natural justice would be implicit. If a statute contravenes the principles of natural justice, it may also be held *ultra vires* Article 14 of the Constitution.*

191. As a result, we hold that Dilip N. Shroff treats omnibus show cause notices as betraying non-application of mind and disapproves of the practice, to be particular, of issuing notices in printed form without deleting or striking off the inapplicable parts of that generic notice. Conclusion: We have, thus, answered the reference as required by us; so we direct the Registry to place these two Tax Appeals before the Division Bench concerned for further adjudication."

12. As could be seen from the above the Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT [(2021) 434 ITR 1 (Bom)] while dealing with the issue of non-strike off of the irrelevant part in the notice issued u/s.271(l)(c) of the Act, held that assessee must be informed of the grounds of the penalty proceedings only through statutory notice and an omnibus notice suffers from the vice of vagueness.

13. Ratio of this full bench decision of the Hon'ble Bombay High Court (Goa) squarely applies to the facts of the Assessee's case as the notice u/s. 274 r.w.s. 271(l)(c) of the Act was issued without striking off the irrelevant portion of the limb and failed to intimate the assessee the relevant limb and charge for which the notices were issued.

14. Thus, by following the above ratio, we are of the opinion that, the penalty order passed u/s 271(1)(c) of the Act by the Assessing Officer and the order of the CIT(A) in confirming the penalty order are erroneous.

15. In view of the above, we allow Ground No. 5 and 2 of the Assessee's Appeal. Accordingly, the orders of penalty passed by the A.O for Assessment Year 2001-02 and Assessment Year 2004-05 to 2012-13 is hereby quashed.

16. In the result, Appeal of the assessee in ITA No. 1024/Del/2023, 1025/Del/2023, 1026/Del/2023, 1027/Del/2023, 1028/Del/2023, 1029/Del/2023, 1030/Del/2023, 1031/Del/2023, 1032/Del/2023 & 1033/Del/2023 are allowed.

Order pronounced in the open Court on 10th July, 2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 10/07/2023

Pk/R.N, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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