

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 663/Kol/2023
Assessment Year: 2003-04

Sushma Tandon B-56, II Floor Ashok Vihar, Phase-1 Delhi - 110052 [PAN: ACYPT6306N]	Vs	Income Tax Officer, Ward- 45(2), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 06/09/2023
घोषणा की तारीख /Date of Pronouncement: 22/09/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal has been filed by the assessee is directed against the order of the National Faceless Appeal Centre (hereinafter 'the Id. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act'), dt. 06/05/2023, for Assessment Year 2003-04.

2. When the case was called out for hearing, none appeared on behalf of the assessee. However, written submission was filed on 31/07/2023. We, therefore, proceed to adjudicate the appeal on the basis of the available records *ex-parte qua* the assessee. The assessee has raised the following grounds of appeal:-

1. That the Learned CIT(A) has erred in law and on facts in confirming the penalty of Rs.5,02,635/- imposed by the income tax officer ward -45(2), Kolkata u/s 271(1)(c) of the income tax act, 1961.
2. That the appellant craves leave to add or amend any ground of appeal at or before the hearing of the appeal."

3. Facts in brief are that the assessee is an individual and declared income from capital gain and other sources at Rs.4,04,950/- declared in the return for Assessment Year 2003-04 filed on 30/07/2003. Thereafter, assessment proceedings were carried out u/s 143(3)(ii) r.w.s. 147 of the Act and income assessed at Rs.27,55,950/- vide order dt. 30/12/2010. Penalty proceedings were initiated and notice u/s 274 was issued on 30/12/2010 followed by framing of penalty order on 20/05/2014 levying penalty at Rs.5,02,635/-, for concealment of particulars of income and furnishing inaccurate particulars with regard to the addition made in the hands of the assessee. Aggrieved the assessee preferred appeal before the Id. CIT(A) but failed to succeed.

4. Now, the assessee is in appeal before this Tribunal.

5. Detailed written submissions have been filed by the assessee along with the paper book containing 75 pages which *interalia* includes copy of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act. The submissions of the assessee indicates that the notice issued u/s 274 of the Act did not indicate as to whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income. It is also submitted that both the elements were mentioned in the showcause notice but one of the element not applicable to the assessee was not struck off. Reliance has been placed on the decision in the case of *Chandra Prakash Bubna vs. Income-tax Officer, Ward -27(3), Kolkata*, in support of the contention that the impugned penalty proceedings are

bad in law because the irrelevant charge raised against the assessee in the notice was not struck off.

6. On the other hand, the ld. D/R has also filed written submissions wherein reference has been made to the provisions of Section 292B of the Act and also reference has been made in the case of *CIT vs. Jagat Novel Exhibitors (P.) Ltd.* [2012] 18 taxmann.com 138 (Delhi) as well as that of Hon'ble Madras High Court in the case of *Sundaram Finance Ltd. vs. ACIT* [2018] 93 taxmann.com 250 (Madras).

7. We have heard rival contentions and perused the material placed before us. Penalty levied u/s 271(1)(c) of the Act at Rs. 5,02,635/- is in challenge before us. The assessee through its written submission has contended that the notice u/s 274 r.w.s. 271 of the Act is bad in law as the specific charge has not been levelled against the assessee as to whether the penalty has been levied for concealing the particulars of income or furnishing inaccurate particulars of income. The showcause notice u/s 274 of the Act dt. 30/12/2011, is reproduced below:-

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P.T.O.

LT.N.S.-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX, 1961

Office of the Income tax Officer, Wd-45(2)
Ground floor, 3, Govt. Place (West) Kolkata-700001

To Sushma Tandon
166, M. G. Road,
Kolkata - 70007.

Dated 30.12.2011
I.T.O. Ward - 45(2),
Kolkata -


Penalty u/s 271(1)(c)

Whereas in the course of proceedings before me for the assessment year 2003-04 it appears to me that you:-

- * have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22 (2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the income-tax act, 1961 No dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.
- * have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961. No..... dated
- * have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 1.30 P.M. on 07/01/2011 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

Seal



Sikha Halder (Sarkar)
Income Tax Officer, Ward-45(2)
Kolkata
Sikha Halder (Sarkar)
I.T.O. Ward - 45(2), Kol
Code No WBG W 145 (2)

Sushma Tandon.

8. From perusal of the above notice, we find that both the elements for levying penalty u/s 271(1)(c) of the Act i.e., furnishing of inaccurate particulars of income as well as concealment of particulars of income are mentioned but one of the element not applicable to the assessee has not been struck off. In these given condition, both the sides have referred and relied on the judicial precedents. However, in view of judgment of the Hon'ble Supreme Court in the case of *CIT v.*

Vegetable Products Ltd. [1973] 88 ITR 192 (SC), if two reasonable constructions of a tax provision are possible, then the construction which favors the tax payer, must be adopted. In the instant case, we find that the Hon'ble High Court of Bombay in the case of *Mohd. Farhan A. Shaikh vs. DCIT* reported in [2021] 125 taxmann.com 253 (Bombay), similar issue has been considered at length by the Hon'ble Court and plethora of judgments have been discussed. The Hon'ble Court has held in favour of the assessee and relevant finding is extracted below:-

"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 Case (supra) 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(1)(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 [2007] 27 SCC 181, in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. Dr. Binapani Dei AIR 1967 SC 1269. 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 Case (supra) 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."

9. From perusal of the above judgment of the Hon'ble Bombay High Court, and on examining the facts of the instant case, we find that in the given case also, the notice issued for carrying out the penalty proceedings carried out u/s 274 r.w.s. 271 of the Act is bad in law and shows that the AO has not made proper application of mind before issuing the notice which thus violates the principles of natural justice, which the assessee is entitled to before being visited with the levying of penalty u/s 271(1)(c) of the Act. We thus, set aside the finding of the Id. CIT(A) and deleted the impugned penalty of Rs. 5,02,635/- and allow all the effective grounds raised by the assessee.

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

Order pronounced in the Court on 22nd September, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Kolkata, Dated 22/09/2023

**SC S.P.*

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त () अपील/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata