

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

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.9570/Del/2019
(ASSESSMENT YEAR 2014-15)**

M/s Mideast Integrated Steels Ltd. H-1, Zamrudpur Community Centre Kailash Colony New Delhi-110 048 PAN-AAACM 0846P	Vs.	ACIT Central Circle-2 New Delhi
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing	10/10/2023
Date of Pronouncement	13/10/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-23, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.08/2019-20 dated 30/09/2019 against the order passed by Assistant Commissioner of Income Tax, Central Circle-02, New Delhi

(hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 30/12/2016 for the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:-

"1. That the learned Commissioner of Income Tax (Appeals)-23, New Delhi has erred both in law and on facts in upholding penalty of Rs. 42,59,019/- imposed by the learned Assessing Officer u/s 271 (l)(c) of the Act in an order dated 14.03.2019.

1.1 That while upholding levy of penalty, learned Commissioner of Income Tax (Appeals) has failed to appreciate that since notice dated 30.12.2016 was vague in as much as it did not state as to whether the assessee has either concealed the particulars of income or furnished inaccurate particulars of income and such a notice could not have been made a basis either to levy penalty or sustain the penalty under section 271(l)(c) of the Act.

1.2 That furthermore, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific charge in the order of penalty under section 271(l)(c) of the Act and order was vague and non-specific and thus, even on this ground, penalty levied and sustained is illegal, invalid and untenable.

1.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that penalty proceeding and quantum proceedings are distinct proceedings and therefore conclusion drawn in quantum proceeding cannot automatically be made a basis to levy penalty u/s 271(l)(c) of the Act.

1.4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the factual matrix of the case of the appellant and evidence on record and conclusions thus drawn mechanically are wholly unjustified.

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that appeal is pending before Hon'ble Income Tax Appellate Tribunal Delhi Benches, New Delhi against the quantum addition of Rs. 1,25,30,213/- on which penalty of Rs. 42,59,019/- imposed by the learned Assessing Officer u/s 271(l)(c) of the Act and therefore order passed by first appellate authority confirming penalty is premature and in complete disregard to various judicial precedents available.

It is therefore prayed that the penalty levied of Rs. 42,59,019/- u/s 271(l)(c) of the Act and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and, appeal of the appellant be allowed.”

3. The only effective issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the penalty levied u/s 271(1)(c) of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee company is engaged in the business of manufacturing of pig iron and mining of iron ore. The return of income for AY 2014-15 was filed on 26/12/2016 declaring total income of Rs.52,60,76,020/- under normal provisions of the Act and book profit of Rs.184,99,20,449/- u/s 115JB of the Act. The assessment was completed u/s 143(3) of the Act on 30/12/2016 determining the total income of the assessee at Rs.131,95,32,890/- under normal provisions of the Act on which the tax payable was considered to be higher than the tax payable u/s 115JB of the Act. On completion of this assessment proceedings, penalty proceedings u/s 271(1)(c) of the Act were initiated by the AO vide issuance of notice u/s 274 r. w. section 271(1)(c) of the Act dated 30.12.2016. In the said show cause

notice, the Ld. AO did not specify the specific charge of offence committed by the assessee i.e., whether the assessee has concealed the particulars of income or furnished inaccurate particulars of income. This would prove fatal to the entire penalty proceedings in view of the Full Bench decision of Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh vs. ACIT (2021) 434 ITR 1 (Bom) (HC)*. The relevant operative portion of the said judgement is reproduced below:-

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. Kaushalya'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 Case (supra) 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 case (supra), 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 case (supra), 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 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.

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.

5. Respectfully following the said decision, we hold that the penalty levied by the Ld. AO would be liable to be deleted on this technical ground. Hence other grounds raised by the assessee need not be adjudicated and they are left open.

6. In the result, the appeal of the Assessee stands allowed.

Order pronounced in the open court on 13th October, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 13/10/2023

Pk/sps

Copy forwarded to:

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

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI