

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1965/Del/2020
(ASSESSMENT YEAR 2010-11)**

Suresh Kumar 182, Athuna Bas Village-Maradatu Badi Post, Bibipur Chhota Tehsil, Fatehpur, Dist:-Sikar Rajsthan-332 317 PAN-BMOPK 3000P	Vs.	Income Tax Officer Ward-40(2) New Delhi
(Appellant)		(Respondent)

Assessee by	Sh.Mukesh Jain, CA & Sh. Samyak Jain, Adv.
Department by	Sh. Anuj Garg, SR-DR
Date of Hearing	12/10/2023
Date of Pronouncement	17/10/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-14, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.46/2018-19/CIT(A)-14, New Delhi, dated 06/05/2019 against the order passed by Income Tax Officer, Ward-40(2), New Delhi (hereinafter

referred to as the 'Ld. AO') u/s 271(1)(c) of the Income Tax Act (hereinafter referred to as 'the Act') on 30/05/2018 for the Assessment Year 2010-11.

2. Apart from the original grounds challenging the action of the ld. CIT(A) in confirming the penalty u/s 271(1)(c) of the Act, the assessee also filed an additional ground on 12.10.23 stating that the ld. AO in the penalty notice had not struck off the inappropriate portion as to whether the assessee had concealed the particulars of income or furnished inaccurate particulars of income. This additional ground is a legal issue and in any case, we find that the very basis of levy of penalty is under challenge before us and hence the additional ground is hereby admitted and is taken up for adjudication along with the original grounds.

3. We have heard the rival submissions and perused the materials available on record. We find that the ld. AR placed on record the show cause notice issued for penalty u/s 274 read with section 271(1)(c) of the Act dated 30.11.2017 wherein it is very clear that the ld. AO had not specifically mentioned the offence committed by the assessee by striking off the irrelevant portion i.e. whether the assessee had concealed his particulars of income or

had furnished inaccurate particulars of income. Now the short question that arises is whether non-striking off of the irrelevant portion in the penalty notice by not specifically mentioning the offence committed by the assessee, would become fatal to the penalty proceedings ? This issue is no longer res integra in view of the Full Bench Decision of Hon'ble Bombay High Court in the case of Mohd. Farhan A Shaikh vs DCIT reported in 434 ITR 1 (Bom)(FB) dated 11.3.2021. The relevant operative portion of the said judgement is reproduced hereunder:-

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.

4. In view of the aforesaid Full Bench decision of Hon'ble Bombay High Court, the argument advanced by the ld. DR that ld. CIT(A) had passed an exparte order and hence this appeal is to be restored back to the file of ld. CIT(A) need not be considered as the issue is already covered by the High Court decision. In the instant case, on perusal of the penalty notice placed on record dated 30.11.2017, it is evident that the ld. AO had not struck off the irrelevant portion thereon mentioning the specific offence committed by the assessee. The ratio laid down in the aforesaid decision of Hon'ble High Court squarely applies to the facts of the instant case before us. Hence we direct the ld. AO to delete the penalty levied u/s 271(1)(c) of the

Act. Accordingly, the additional ground raised by the assessee is allowed. Since the relief is granted based on additional ground itself, there is no need to separately adjudicate the original grounds raised by the assessee.

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

Order pronounced in the open court on 17th October, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 17/10/2023

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI