

**IN THE INCOME TAX APPELLATE TRIBUNAL “I” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No.171/Mum/2008  
(Assessment Year: 2002-03)

&

ITA No.4990/Mum/2011  
(Assessment Year: 2003-04)

Dy. CIT(IT) – 3(1) Scindia House, R. No. 132, 1 <sup>st</sup> Floor, N. M. Road, Mumbai- 38	Vs.	M/s. Global Cricket Corpn Pte Ltd. C/o. S. R. Batliboi & Co. 18 <sup>th</sup> Floor, Express Towers, Nariman Point, Mumbai-21
PAN/GIR No. AABCG 7951 L		
<b>(Revenue)</b>	<b>:</b>	<b>(Assessee)</b>

ITA No. 4182/Mum/2011  
(Assessment Year: 2003-04)

&

Cross Objection No. 83/Mum/2012  
(Arising out of ITA No.4990/Mum/2011)  
(Assessment Year: 2003-04)

M/s. Global Cricket Corpn Pte Ltd. C/o. S R B C & Associates 14 <sup>th</sup> Floor, The Ruby, 29 Senapati Bapat Marg, Dadar (W), Mumbai-400 028	Vs.	The Dy. DIT (IT)-3(1) Mumbai- 400 038
PAN/GIR No. AABCG 7951 L		
<b>(Assessee)</b>	<b>:</b>	<b>(Revenue)</b>
<b>Assessee by</b>	<b>:</b>	Shri P J Pardiwala/Aarati Sathe
<b>Revenue by</b>	<b>:</b>	Shri Ajay Kumar Sharma
<b>Date of Hearing</b>	<b>:</b>	16.10.2023
<b>Date of Pronouncement</b>	<b>:</b>	27.10.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

These appeals have been filed by the Revenue and the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax

Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2002-03 and 2003-04.

2. The solitary issue involved in these appeals pertains to the penalty levied u/s. 271(1)(c) of the Act. As the facts are identical, in all these appeals, we hereby pass a consolidated order in all these appeals by taking ITA Nos. 4990/Mum/2011 and 4182/Mum/2011 as the lead cases.

**ITA Nos. 4990/Mum/2011 and 4182/Mum/2011**

3. These are cross appeals filed by the Revenue and the assessee challenging the order of the Id. CIT(A) relevant to A.Y. 2003-04.

4. The brief facts are that the assessee company is incorporated in Singapore and has obtained Worldwide Media and sponsorship right with regard to various cricketing events from 2000 to 2007 and had earned income from granting of broadcasting and sponsorship rights to various broad casters and sponsors. The assessee had filed its return of income declaring total income at Rs.55,67,480/- dated 27.11.2003 and the same was processed u/s. 143(1) of the Act. The assessee's case was reopened u/s. 147 of the Act vide notice u/s. 148 of the Act dated 28.04.2005 for the reason that the assessee has earned revenue of USD 16,01,27,908 on account of grant of broad casting rights, out of which only USD 1,16,611 was offered for tax as 'royalty income' as per the provisions of Article 12 of India-Singapore treaty and the balance amount has been treated as 'business profit' not taxable in India. Further, the Id. Assessing Officer ('A.O.' for short) had reopened the assessee's case for the reason that the assessee is not entitled to treaty benefit as per

Article 24 for the reason that the payment received for broad casting and sponsorship agreements were not received in Singapore and the same is liable to be taxed as 'royalty' u/s.9(1)(vi) of the Act and also the payment from sponsorship agreement is to be treated as payment for the use of 'commercial equipment'. The assessee vide its submission has stated to treat its return of income as return in compliance with the notice u/s. 148 of the Act. The Id. A.O. then passed the assessment order dated 15.12.2006 u/s. 143(3) r.w.s. 147 of the Act and determined the total income at Rs.153,47,12,241/- and initiated the penalty proceeding u/s. 271(1)(c) of the Act for furnishing of inaccurate particulars of income and for concealment of income. The Id. A.O. vide order dated 31.03.2010 passed u/s. 271(1)(c) of the Act levied a penalty of Rs.35,41,86,182/-.

5. Aggrieved, the assessee was in appeal before the Id. CIT(A) challenging the impugned penalty levied by the Id. A.O.

6. The Id. CIT(A) vide order dated 05.03.2011 partly allowed the appeal of the assessee.

7. Both the Revenue as well as the assessee are in appeal before us, challenging the impugned order of the Id. CIT(A).

8. The learned Authorised Representative ('Id. AR' for short) for the assessee submitted that the assessee had filed an additional ground of appeal in ITA No. 4182/Mum/2011, challenging the penalty order on the ground that the notice issued by the Id. A.O. has not struck off the irrelevant limb as to whether the penalty was levied for concealment of income or for furnishing inaccurate particulars of income. The Id. AR

relied on the decision of Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. v. Commissioner Of Income Tax* [1998] 229 ITR 383 (SC) for the admission of the additional ground. The Id. AR further contended that the assessee's case is covered by the full bench decision of the Hon'ble Jurisdictional High Court in the case of *Mohd. Farhan A. Shaikh vs. Dy. CIT* [2021] 125 taxmann.com 253 (Bom).

8. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and vehemently opposed to the filing of the additional ground as the same was not raised before the lower authorities. The Id. DR further to this contended that there was no prejudice caused to the assessee and that the penalty was levied both for concealment of income as well as for furnishing inaccurate particulars. The Id. DR relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee being a non resident company was engaged in the management and promotion of sporting events and also on sale and distribution of Television and other commercial rights. The assessee had claimed that only US Dollar 1,16,611 were taxable as royalty under Article 12 as per India Singapore treaty and the balance receipts are not taxable in India for the reason that the assessee has no permanent establishment (PE for short). The Id. A.O. reopened the assessee's case by relying on the assessment order of the assessee in A.Y. 2002-03 where it was held that the assessee was not entitled to treaty benefit as per Article 24 of the said treaty since the payments were not received in Singapore but in Jersey, UK and was taxable as royalty u/s. 9(1)(vi) of the

Act for the use of commercial equipment, the ld. A.O. made the following addition to the total income of the assessee:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amounts (in USD)</i>	<i>Exchange rate as per Rule 115</i>	<i>Amount (in Rs.)</i>
1	<i>SET Satellite (Singapore) Pte. Ltd.</i>	<i>11,992,500</i>	<i>47.37</i>	<i>568,084,725</i>
2	<i>Prasar Bharati (Broadcasting Corporation of India)</i>	<i>12,137,159</i>	<i>47.37</i>	<i>574,937,222</i>
3	<i>Prasar Bharati All India Radio</i>	<i>1,10,000</i>	<i>47.37</i>	<i>5,210,700</i>
4	<i>LG Electronics India Private Ltd.</i>	<i>3,971,060</i>	<i>47.37</i>	<i>188,109,112</i>
5	<i>Hero Honda Motors Ltd.</i>	<i>2,550,150</i>	<i>47.37</i>	<i>120,800,606</i>
6	<i>Hutchison Max Telecom Private Ltd.</i>	<i>1,520,000</i>	<i>47.37</i>	<i>72,002,400</i>
	<i>Total</i>	<i>32,280,869</i>		<i>1,529,144,765</i>

10. The ld. A.O. initiated the penalty proceeding u/s. 271(1)(c) of the Act vide notice dated 15.12.2006 u/s. 274 r.w.s. 271(1)(c) of the Act. The ld.A.O. after hearing the assessee held that the assessee has furnished the inaccurate particulars of income and has also concealed the particulars of income, thereby levying the penalty of Rs.35,41,86,182. Subsequent to that in an appeal preferred by the assessee, the ld. CIT(A) vide order dated 18.11.2008 has held that the assessee was eligible to claim benefit of India-Singapore treaty and the payment from SET Satellite (Singapore) Pte. Ltd. are held to be not taxable as 'royalty' under Article 12(2) of the treaty as per the Tribunal decision and the payments from Broadcasting Corporation of India and Prasar Bharati All India Radio are to be treated as 'royalties' and 50% of the payment received from LG, Hero Honda and Hutchison for the use of trademarks, trade names and copy rights are to be taxable as 'royalties' under Article 12 and clause (3)(a) of the treaty.

11. The ld. CIT(A) partly allowed the appeal filed by the assessee, on the ground that the payments received by the assessee from SET Satellite Capital Singapore Ltd. was a debatable issue, as the Tribunal has held that the said payment does not arise in India and

as SET Satellite was not required to deduct TDS on the payment made to the assessee. The Id. CIT(A) further held that the assessee has furnished the inaccurate particulars of income for the balance receipts where the assessee has not made full disclosure of the nature of the receipts along with the name of the parties, the amount and consideration received by the assessee. The Id. CIT(A) further held that the assessee has not fully disclosed these details in the note to the computation of the income and the explanation offered by the assessee are found to be false and that the same is covered by clause (A) of Explanation 1 to section 271(1)(c) of the Act. The Id. CIT(A) upheld the penalty levied by the Id. A.O. excluding the payment received on account of Broadcasting right from the SET Satellite (Singapore) Pte. Ltd.

12. From the above factual matrix, it is observed that the Id. AR has raised an additional ground, challenging the validity of the notice issued u/s. 274 r.w.s. 271 of the Act dated 15.12.2006 on the ground that non striking of the irrelevant limb in the notice would vitiate the penalty proceedings. As the additional ground goes to the very root of the cause, we hereby admit the additional ground raised by the assessee as per the provision laid down by the Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd.* (supra). The jurisdictional ground raised by the assessee is supported by the decision of the Hon'ble Jurisdictional High Court in the case of *Mohd. Farhan A. Shaikh* (supra) which has held that non striking on the irrelevant limb would vitiate the penalty proceedings in *toto*. As it is a settled proposition of law that the Id. A.O. ought to have struck off the irrelevant limb while issuing the penalty notice, we are of the considered view that the penalty levied by the Id. A.O. and partly confirmed by the Id. CIT(A) has to

be deleted. The relevant extract of the said decision is cited hereunder for ease of reference:

*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 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) 2 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*

*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.*

13. From the above observation, we conclude that non striking of the irrelevant limb has been held to be violation of the mandatory condition, which in turn violates the principle of natural justice. The Hon'ble High Court has dealt with various decisions which has constantly reiterated the fact that the assessee should be aware of the exact charge for which the penalty proceeding has been initiated in order to entitle him to contend on the said charges. The non striking of the irrelevant limb amounts to vagueness and ambiguity in the notice which tantamount to non application of mind by the Id. A.O. It also does not give the assessee a proper opportunity of hearing manifested in the provision of section 274 of the Act. On this observation, we direct the Id. A.O. to delete

the impugned penalty on this ground. As we have decided this issue on the legal ground, the other grounds of appeal raised by the assessee and the Revenue become academic in nature. The cross objection filed by the assessee also becomes infructuous.

14. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

**ITA No. 171/Mum/2008**

15. As the facts are identical in this appeal, the finding in ITA Nos. 4990 & 4182/Mum/2011 applies mutatis mutandis to this appeal also.

16. In the result, the appeal filed by the Revenue is dismissed.

*Order pronounced in the open court on 27.10.2023*

Sd/-

(Om Prakash Kant)  
Accountant Member

Mumbai; Dated : 27.10.2023  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai