

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

**BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.856/Del/2023
(ASSESSMENT YEAR 2011-12)**

**ITA No.857/Del/2023
(ASSESSMENT YEAR 2013-14)**

Raj Kumar Karanwal 194/1, Brahmpuri Muzaffarnagar Uttar Pradesh PAN-ADQPK 8099N (Appellant)	Vs.	Income Tax Officer Ward-3(2)(2) Muzaffarnagar (Respondent)
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Appellant by	Sh. Sankalp Malik, Advocate
Respondent by	Sh. S.L. Anuragi, Sr. DR

Date of Hearing	16/11/2023
Date of Pronouncement	28/11/2023

ORDER

PER M. BALAGANESH, AM:

Both appeals of the Assessee arise out of the separate orders of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as [‘Ld. CIT(A)’] both dated 30/01/2023 against the orders dated 31/03/2014 & 29/03/2016 passed by ITO, Ward-1(1) & Ward-

2(2), Muzaffarnagar (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act for the Assessment Years 2011-12 & 2013-14.

2. The Assessee has raised the common grounds in both appeals except variance of figures:-

“1. That the order was wrong, illegal and it is prayed that the penalty levied amounting to Rs.255100/- may please be dropped.

2. In the penalty order neither there is concealment nor furnishing inaccurate particulars, the AO has not specified any such finding in the assessment order. No specified any such finding in the assessment order. No finding has been recorded while issuing notice u/s 274.

3. Why penalty was being initiated and further CIT(A) upholding the order is illegal as no specification has been given by the authority below. Hence, the penalty order is illegal.

4. The expenditure disallowed to the tune of Rs.787127/- is due to a view held by the AO. The expenses disallowed ought to have been allowed by CIT(A) on the fact of the case. There was no element of inaccurate particulars in the return filed. Hence, penalty may please be dropped.

5. The appellant craves to amend, add, modify or substitute any of the ground urged above.”

3. Identical issue is involved in both the appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience.

4. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the levy of penalty u/s

271(1)(c) of the Act in the facts and circumstances of the instant case.

5. We have heard rival submissions and perused the materials available on record. At the outset, the Ld. AR placed on record the penalty notice issued u/s 274 r.w.sec.271(1)(c) of the Act for both the years under consideration. From the perusal of the said notice, we find that the Ld. AO had not struck off the irrelevant or inappropriate portion in the said notice and had not specifically mentioned the offence committed by the assessee i.e., whether the assessee had concealed his particulars of income or had furnished inaccurate particulars of income. We find that 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 [2021] 434 ITR 1 (Bom), wherein the Hon'ble Bombay High Court had held that non striking of the irrelevant matter in the show cause notice issued for initiating penalty would vitiate the entire penalty proceedings. The relevant operative portion of the said order is reproduced herein 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 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 Apace Realty 14 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 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 [(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 principles of natural justice would be implicit. If a statue 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."

6. Respectfully following the aforesaid decision, we direct the Ld. AO to delete the penalty levied for both the years under consideration. Accordingly, grounds raised by the assessee are allowed.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 28th November, 2023.

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Dated: 28/11/2023

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