

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHE "G", NEW DELHI**

Before Sh. Saktijit Dey, Vice President

Sh. M. Balaganesh, Accountant Member

ITA No. 2003/Del/2023 : Asstt. Year: 2017-18

Scholars International Educational Foundation, 9 th Mile Stone, Rishikesh-Haridwar Highway Shyampur, Rishikesh-249204	Vs	DCIT(Exemptions), Circle Ghaziabad-201002
(APPELLANT)		(RESPONDENT)
PAN No. AAETS1935N		

Assessee by : Ms. Monika Agarwal, Adv.

Revenue by : Sh. Anuj Garg, Sr. DR

Date of Hearing: 29.11.2023

Date of Pronouncement: 30.11.2023

ORDER

Per M. Balaganesh, Accountant Member:

The present appeal has been filed by assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 25.05.2023.

2. Though, the assessee has raised several grounds of appeal before us, the only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s 270A of the Income Tax Act, 1961 in the sum of Rs.72,99,406/- in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. We find that the assessee being a charitable trust enjoying registration u/s 12AA of the Act

consequentially eligible for exemption u/s 11 of the Act had claimed disallowance of depreciation on certain fixed assets as an application of income, ignoring the amendment brought u/s 11(6) of the Act w.e.f. 01.04.2015. This disallowance of depreciation was accepted by the assessee in the quantum proceedings. The Id. AO initiated penalty proceedings u/s 270A of the Act on 01.11.2019 wherein in the said notice issued u/s 274 r.w.s. 270A of the Act, the Id. AO had not struck off the irrelevant portion i.e. whether the assessee has underreported its income or misreported its income. Since, no specific offence committed by the assessee was mentioned by the Id. AO in the show cause notice, the assessee vide ground no. 2 before us had submitted that non-striking of irrelevant portion in the penalty show cause notice shall vitiate the entire penalty proceedings itself. 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 wherein it was held as under:

“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. Further, we also find that different rates of penalty are stipulated in Section 270A of the Act for underreporting of income; for misreporting of income and for underreporting as well as misreporting of income. Hence, it is even more onerous on the part of the Id. AO to specifically mention the offence committed by the assessee whether it had underreported the income or misreported the income or committed both the offence so as to apply the respective penalty amounts as stipulated u/s 270A of the Act. This onerous task being not

fulfilled by the Id. AO would result in entire penalty proceedings getting vitiated. In view of the specific provisions of the Act and in view of the decision of Hon'ble Bombay High Court referred (supra), we direct the AO to delete the penalty levied u/s 270A of the Act in the facts and circumstances of the instant case. Accordingly, the ground no. 2 raised by the assessee is hereby allowed. Since, the relief is granted on this technical ground, the other grounds raised by the assessee need not be adjudicated and they are left open.

5. In the result, the appeal filed by the assessee is allowed.
Order Pronounced in the Open Court on 30/11/2023.

Sd/-

(Saktijit Dey)
Vice President

Sd/-

(M. Balaganesh)
Accountant Member

Dated: 30/11/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR