

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2237/MUM/2023
(Assessment Year: 2015-16)**

Dhara Vijay Khara,
20, Vesant Mahal, C Road,
Churchgate - 400020
[PAN: AAEPK5783G]

..... **Appellant**

Income Tax Officer,
Ward 17(2)(1), Mumbai,
Kautilya Bhavan,
Mumbai - 400051

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Rajendra Chandekar

Date

Conclusion of hearing : 16.11.2023
Pronouncement of order : 29.11.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 22/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2015-16, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order, dated 17/05/2018, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:
 1. *In the facts and circumstances and in law, Ld CIT(A), Faceless has erred in confirming the penalty initiated under section*

271(1)(c).

2. *In the facts and circumstances and in law, Ld. CIT(A), Faceless has erred in confirming the penalty under section 271(1)(c) of Rs. 85,565 levied by the assessing authority without adjudicating the submissions made, relying upon the binding judgments. He ought not to have confirmed it on the ground that the initiation was for concealment of income or furnishing of inaccurate particulars of income."*
3. When the appeal was taken for hearing none present on behalf of the Appellant. On perusal of the memorandum of appeal, we find that the solitary issue raised in the present appeal pertains to the levy of penalty under Section 271(1)(c) of the Act.
4. We have perused the penalty order, dated 17/05/2018, and the order, dated 22/05/2023, passed by the CIT(A); and have heard the Learned Departmental Representative who relied upon the aforesaid orders. We note that while dismissing the appeal preferred by the Appellant and confirming the levy of penalty of INR 85,565/- levied by the Assessing Officer under Section 271(1)(c) of the Act, the CIT(A) has, in paragraph 5.4.2. of the order impugned, recorded that the notice was issued by the Assessing Officer under Section 274 of the Act without taking any of the two limbs.
5. The full Bench of the Hon'ble Bombay High Court in the case **Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum: 434 ITR 1 (Bombay)**, has held that a mere defect in the notice - not striking off the irrelevant part/limb, would vitiate the penalty proceedings. The relevant extract of the aforesaid judgment reads as under:

"Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(1)(c), does a mere defect in

the notice—not striking off the irrelevant matter—vitiates the penalty proceedings?

181. *It does.* The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.” (Emphasis supplied)

6. It is admitted position that in the present case, penalty notice was issued under Section 274 read with 271 of the Act without deleting or striking off the inapplicable part. Thus, the statutory notice issued to the Assessee does not inform the Assessee about the charge against the Assessee – whether penalty under Section 271(c) of the Act was sought to be levied for concealment of particulars of income or furnishing inaccurate particulars of income. Therefore, penalty levied under Section 271(1)(c) of the Act cannot be sustained as per the judgment of the Full Bench decision of the Hon'ble jurisdictional High Court in the case of Mohammed Farhan A Shaikh vs DCIT (supra). Thus, Ground No. 1 and 2 raised in the appeal are allowed.
7. In the result, appeal preferred by the Assessee is allowed.

Order pronounced on 29.11.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.11.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai