

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2850/MUM/2023
(Assessment Year: 2011-12)**

M/s S Sagar Enterprise,
BE-5010, Bharat Diamond Bourse,
BKC, Bandra (East),
Mumbai - 400051
[PAN: AAGFS8866G]

.....

Appellant

**Deputy Commissioner of Income Tax
Central Circle 1(1), Mumbai,**
Central Building, Mumbai

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Shri Rahul Sarda
For the Respondent/Department : Dr. Kishor Dhule

Date : 13.12.2023
Conclusion of hearing : 18.12.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 22/06/2023, passed by the Ld. Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order, dated 14/01/2022, 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) The NATIONAL FACELESS APPEAL CENTRE (NFAC) has erred by

upholding the order passed by learned assessing officer and dismissing the appeal filed by your appellant thereby upholding the levy of penalty of Rs.4,54,486/- u/s 271(1)(c) on the Appellant.

2) The NFAC failed to appreciate that the Appellant had submitted all details and documentary evidence in respect of the additions and the addition was sustained purely on an adhoc estimate basis. Hence, no penalty could be levied on the basis of the same.

3) Without prejudice to the above, the NFAC failed to appreciate that the Assessing Officer did not strike out the irrelevant portion in the notice u/s 271(1)(c) viz. whether the penalty was being proposed for alleged furnishing inaccurate particulars of income or for alleged concealment of income. Thus, the notice was defective, in violation of principles of natural justice and the penalty proceedings are vitiated. Hence, the order dated 14.01.2022 levying penalty is liable to be quashed and the penalty be deleted.

4) The Appellant has inadvertently paid fees of Rs. 10,000/- vide challan no. 01324 dated 03.07.2023 towards the fees of the present appeal whereas the correct amount of fees was only Rs. 500/-. Hence, the Appellant requests that this Hon'ble Tribunal directs the Income Tax Department to grant a refund of the excess fees bona fide paid by the Appellant."

3. Appellant has challenged the levy of penalty of INR 4,54,486/- by the Assessing Officer under Section 271(1)(c) of the Act which has been confirmed by the CIT(A) leading to the filing of the present appeal.
4. Brief facts of the case are that for the Assessment Year 2011-12 assessment under Section 143(3) read with Section 147 of the Act was framed on the Appellant vide order, dated 09/12/2016, at Income of INR 1,29,76,272/- after making addition of INR 22,34,445/-, being 5% of the alleged bogus purchases of INR 4,46,88,905/-. In appeal filed by the Appellant, the CIT(A), vide order dated 13/08/2018, restricted the addition to 3% of alleged bogus purchases.
5. Since the Assessing Officer had also initiated penalty proceedings under Section 271(1)(c) of the Act, the Assessing Officer passed penalty

order on 14/01/2022 levying penalty of INR 4,54,486/-. Being aggrieved, the Appellant preferred appeal before CIT(A) which was dismissed. Now the Appellant is in appeal before us.

6. When the appeal was taken up for hearing, the Ld. Authorized Representative of the Appellant submitted the issue raised in the present appeal is covered in favour of the Appellant by the judgment of the Full Bench of the Hon'ble Bombay High Court in the case of **Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum** reported in **434 ITR 1 (Bombay)**, as the penalty notice issued under Section 274 read with Section 271(1)(c) of the Act has been issued without deleting or striking off inapplicable part. He further submitted that, even otherwise, the penalty levied in case of additions made on the estimate basis cannot be sustained. Per contra, the Ld. Departmental Representative relied upon the penalty order to support his case.
7. We have heard the rival submissions, perused the material on record and considered the legal position. The full Bench of the Hon'ble Bombay High Court in the case Mohd. Farhan A Shaikh Vs. DCIT (supra) has held that a mere defect in the notice - not striking off the irrelevant matter, 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—vitate 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)

8. A perusal of the penalty notice, dated 09/12/2016 and 16/09/2021 issued under Section 274 read with 271 of the Act would show that the notices are in the nature of an omnibus show cause notice issued without deleting or striking off the inapplicable part. Same is the case with the penalty order, dated 14/01/2022, passed under Section 271(1)(c) of the Act, as it also does not state under which limb of Section 271(1)(c) of the Act penalty has been levied. Therefore, respectfully following the judgment of the Full Bench of the Hon'ble Bombay High Court in case of Mohammed Farhan A Shaikh vs DCIT (supra), we delete the penalty of INR 4,54,486/- levied under Section 271(1)(c) of the Act. Accordingly, Ground No. 3 raised by the Appellant is allowed. All the other grounds raised by the Appellant are dismissed as being infructuous.
9. In result, the present appeal preferred by the Appellant is allowed.

Order pronounced on 18.12.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 18.12.2023
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