

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**  
**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER &**  
**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**  
**ITA No.2834/Mum/2023**  
**(A.Y. 2015-16)**

Vijay Moru Mhatre, Plot No. 08, 1 <sup>st</sup> Floor MCCH Society, Panvel Maharashtra – 410206	Vs.	ACIT, CC-1 6 <sup>th</sup> Floor Room No. 10, Road No. 16-Z, Ashar IT Park, Wagle Industrial Estate, Thane (W)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AEHPM8104Q		
Appellant	..	Respondent

Appellant by :	Khushiram Jadhawani
Respondent by :	Usha Gaikwad

Date of Hearing	13.12.2023
Date of Pronouncement	19.12.2023

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the penalty order passed by the ld. CIT(A)-11, Pune, dated 28.04.2023 for A.Y. 2015-16. The assessee has raised the following grounds before us:

**Ground No.1**

- (a) Section 271(1) (c): In the Facts and Circumstances of the case and in law, Ld.AO has erred reasons for making an addition are wrong, insufficient and contrary to the facts and evidence on record as every addition cannot come under Penalty Section.
- (b) Section 271(1)(c): In the Facts and Circumstances of the case and in law. Ld.AO has erred in imposing penalty on a sum of Rs. 2,90,937/- u/s 271 (1)(c) on wrong presumption of facts and incorrect comparison of income declared u/s.139(1) vis-a-vis 153A. Appellant wish to draw attention to ITR-1 wherein income from House property is Nil as against Rs.4,00,137/- stated in table prepared in Page No 3 of 5 of assessment order dated:- 23/12/2019. Appellant states that Rs.4,00,137/- is income from Fixed Deposit duly disclosed in return of income filed u/s.139(1) and also in return of Income u/s.153A.”

2. In addition to the above ground of appeal the assessee in the affidavit filed on 04.08.2023 the assessee also referred Annexure A as under:

*“The appellant submits that the order levying penalty under section 271(1)(c) is bad in law inasmuch as the Assessing Officer, in the impugned printed notice dated 23.12.2019 issued under section 274 r.w.s. 271, has not specifically mentioned the charge brought against the appellants that is, whether it is for furnishing inaccurate particulars of income or for concealment of particulars of income (photo copy of notice enclosed as Exhibit A). It is also evident that the Assessing Officer has not even tick-marked the limb/ charge for which he initiated the penalty proceedings. This shows total non-application of mind by the Assessing Officer at the stage of initiation itself. As such, the appellant contends that the initiation of penalty proceedings is bad in law and hence, the impugned penalty is required to be quashed Reliance is placed on the decision of the jurisdictional High Court in the case of Mohd. Farhan A. Shaikh-434 ITR 1 (photo copy enclosed as Exhibit B)”*

3. During the course of appellate proceedings before us the assessee has filed affidavit for condonation of delay in filing the impugned appeal by 101 days. Before us, the assessee has referred the affidavit filed on 04.08.2023 and submitted that assessee was pursuing two appeals before the Id. CIT(A) for assessment year 2015-16 and 2016-17 both against orders passed u/s 271(1)(c) of the Act. The assessee has prepared the written submission for filing before the Id. CIT(A), however, the same could not be uploaded on the system thereafter the assessee had sent the written submission through e-mail on 16.05.2023 to the Id. CIT(A). However, the Id. CIT(A) has allowed the appeal of the assessee for the assessment year 2016-17 on the reason that there was defect in the statutory notice issued by the assessing officer to the assessee. However, on the similar facts the Id. CIT(A) has dismissed the appeal of the assessee for the assessment year 2015-16. Because of such anomaly physical copy of the order for assessment year 2016-17 was only received on 28.07.2023. The assessee has enclosed the copy of the order for assessment year 2016-17 along with the appeal paper while filing the appeal for assessment year 2015-16 on 09.08.2023. Looking to the aforesaid facts and circumstances it appeared that there is

bonafide reason for delay in filing the impugned appeal because of non-availability of order for the assessment year 2016-17 based on same reason for defective notice issued u/s 271(1)(c) of the Act. Therefore, following the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katigir Ors. Civil Appeal No. 460 of 1987 dated 19.02.1987 wherein held that sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to the approach which scuttle a decision on merit. Looking to the above facts and findings we condone the delay in filing the impugned appeal.

4. Fact in brief is that in the return of income filed u/s 139(1) of the Act the assessee has shown income from house property of Rs.4,00,137/-. Thereafter a search and seizure operation u/s 132 of the Act was carried out in the case of the assessee on 20.09.2017. In response to the notice u/s 153A of the Act the assessee filed the return of income in which he has declared income from house property at Rs.1,09,200/- as against the income of Rs.400,137/- declared under the head income from house property in the return filed u/s 139(1) of the Act. During the course of assessment proceedings u/s 153A of the Act the assessee could not justify the reduction in his income from house property as declared in the return filed u/s 153A of the Act compared to such income declared in the original return of income. Consequently, the difference of Rs.290,937/- [Rs.400,137 (-) Rs.109,200/-] was added to the total income of the assessee while completing the assessment u/s 143(3) r.w.s 153A of the Act. The assessing officer has also initiated penalty u/s 271(1)(c) of the Act.

5. The assessing officer has levied the penalty of Rs.89,899/- vide order u/s 271(1)(c) of the Act dated 06.07.2021 for furnishing inaccurate particulars of income.

6. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

7. During the course of appellate proceedings before us the ld. Counsel referred Annexure A at page 49 of the appeal paper as written submission made before the ld. CIT(A) submitted that penalty levied u/s 271(1)(c) of the Act was bad in law after referring the copy of notice under section 274 r.w.s 271 of the Act that AO had not even tick-marked the limb/charge for which the penalty was initiated. The ld. Counsel in his submission after referring the decision of the jurisdictional High Court in the case of Mohd. Farhan A. Saikh 434 ITR 1 contended in view of the above defect in the notice the impugned penalty was required to be quashed.

On the other hand, the ld. D.R has supported the order of the lower authorities.

8. Heard both the sides and perused the materials available on record. Assessment u/s 143(3) r.w.s 153A of the Act was completed on 23.12.2019. The difference in the returned income filed u/s 153A and returned file u/s 139(1) of the Act of Rs.290,037/- under the head income from house property was added to the total income of the assessee. The AO had also levied penalty of Rs.89,899/- u/s 271(1)(c) of the Act on the above referred differential amount. During the course of appellate proceedings before us the ld. Counsel has contended vehemently that the AO had issued notice u/s 274 read with Sec. 271(1)(c) dated 23.12.2019 as referred above in this order without specifying whether the penalty is levied for concealment of income or furnishing of inaccurate particular of income. With the assistance of learned representative, we have gone through the notice under section 274 read with section 271(1)(c) dated 23.02.2019 the relevant part of the notice is reproduced as under:-

*“Whereas in the course of proceedings before me for the Assessment Year 2015-16, it appears to me **that you have concealed the particulars of income or furnished inaccurate particulars of such income.***

*You are hereby requested to appear before me either personally or through a duly authorised representative at 11:00 AM on 07/01/2020 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961.*

*If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c) of the Income Tax Act, 1961.”*

9. On perusal of the aforesaid notice it is clear that Assessing Officer has not specified whether the penalty is being levied on account of concealment of particulars of income or furnishing of inaccurate particulars of income. In this regard, we have gone through the case of Jurisdictional High court referred by learned counsel in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 125 taxmann.com 253 (Bombay), wherein the relevant Para of the head note is reproduced as under:-

*“Section 271(1)(c), read with section 274 of the Income-tax Act, 1961 - Penalty - For concealment of income (Recording of satisfaction) - Whether where assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), a mere defect in notice-not striking off irrelevant matter would vitiate penalty proceedings - Held, yes - Whether since penalty proceedings culminate under a different statutory scheme that remains distinct from assessment proceedings, therefore, assessee must be informed of grounds of penalty proceedings only through statutory notice - Held, yes - Whether even if notice contains no caveat that inapplicable portion be deleted, it is in interest of fairness and justice that notice must be precise, it should give no room for ambiguity - Held, yes [Paras 181 and 188][In favour of assessee]”*

10. Further, we have also perused the decision of coordinate Bench of the ITAT, Mumbai in the case of M/s Bhavya Shashank Shanbhag Vs. DCIT in ITA No. 4630Mum/2019 vide order dated 09.07.2021, wherein the co-ordinate Bench in identical issue and similar facts has deleted the penalty after following the decision of Hon’ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh (supra). The relevant part of the decision of coordinate Bench is reproduced as under:-

“3. We have heard rival submissions and perused the materials available on record. We find that assessee for both the assessment years vide ground No. 1(e) had raised the preliminary technical ground that in the show-cause notice issued by the ld. AO u/s.274 r.w.s. 271(1)(c) of the Act, he had not struck-off the irrelevant portion and that the ld. AO had not specified the specific offence committed by the assessee by stating as to whether the assessee has concealed his particulars of income or had furnished inaccurate particulars of income. 3.1. We find that this issue is no longer res-integra in view of the Full Bench decision of the Hon’ble Jurisdictional High Court in the case of Mohd. Farhan A Shaikh vs. DCIT reported in 434 ITR 1 (Bom). The relevant portion of the said order is reproduced hereunder:-

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.

182. More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the correct proposition of law. Question No. 2: Has Kaushalya failed to discuss the aspect of 'prejudice'?

184. Indeed, Smt. Kaushalya case (supra) did discuss the aspect of prejudice. As we have already noted, Kaushalya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushalya, "fully knew in detail the exact charge of the Revenue against him". For Kaushalya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, "the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went onto observe that for sustaining the plea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Smt. Kaushalya case (supra) closes the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done".

185. No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing

contemplated under section 274. So asserts Smt. Kaushalya case (supra). In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.

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 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.*

*3.2. Respectfully following the aforesaid decision, we hold that the penalty levied by the ld. AO for both the assessment years is hereby directed to be deleted.*

*3.3. Since the relief is granted to the assessee on this aspect by adjudicating the ground No.1(e), the other grounds raised by the assessee for both the years on legality of levy penalty as well as on merits of the case are not adjudicated herein and the same are hereby left open.”*

11. In the light of the decision of the co-ordinate Bench as elaborated above, there is nothing before us on hand to differs from the issue raised in the cases cited (supra) so as to take a different view on this issue. Therefore, since the issue on hand being squarely covered following the principle of consistency, we find merit in the submission of the assessee and direct the Assessing Officer to delete the penalty since, the notice issued under section 274 read with section 271(1)(c) dated 23.12.2019 was bad in law. Since, we have deleted the penalty on account of invalid notice issued under section under section 274 read with section 271(1)(c) dated 18th March 2015, therefore other ground on merit are not require to be adjudicated.

12. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 19.12.2023

Sd/-  
(N.K. Choudhry)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 19.12.2023

Rohit: PS

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

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

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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