

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

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

**ITA No. 3147/MUM/2023
(Assessment Year: 2014-15)**

**Royal Marwar Hospitality
Private Limited,**

16th Floor D Wing, Trade World,
Kamala Mills Compound,
Senapati Bapat Marg, Lower Parel,
Mumbai - 400013
[PAN: AACCR77001C]

..... **Appellant**

**Deputy Commissioner of Income Tax,
Circle 3(3)(1), Mumbai**

Aayakar Bhawan, M.K. Road,
Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Himanshu Gandhi
For the Respondent/Department : Smt. Mahita Nair

Date

Conclusion of hearing : 02.01.2024
Pronouncement of order : 05.01.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 21/08/2023, 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 2014-15, whereby the Ld. CIT(A) dismissed the appeal of the Assessee against the Penalty Order, dated 29/04/2017, 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 *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty of Rs. 69,43,532/- which was initiated on the basis of invalid notice under section 274 r.w.s. 271(1)(c) of the Income Tax Act, 1961.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming penalty of Rs. 69,43,532/- under section 271(1)(c) of the Income Tax Act, 1961."*

3. Appellant has challenged the levy of penalty of INR 69,43,532/- 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 by the Assessee.

4. Brief facts of the case are that for the Assessment Year 2014-15 assessment under Section 143(3) of the Act was framed on the Appellant vide order, dated 27/10/2016 whereby the revised return filed by the Appellant was accepted. However, the Assessing Officer noted that the revised return declaring additional capital gains income was filed only after notice under Section 143(2) of the Act was issued to the Appellant and therefore, penalty proceedings were initiated which culminated into penalty order dated 29/04/2017 passed under Section 271(1)(c) of the Act levying a penalty of INR 69,43,532/-. Being aggrieved, the Appellant preferred appeal before CIT(A) which was dismissed vide order, dated 21/08/2023. Now the Appellant is before us in appeal against the aforesaid order of dismissal passed by the CIT(A).

5. The Ld. Authorised Representative for the Appellant appearing before us submitted that the penalty order was not sustainable since the Assessing Officer had failed to record satisfaction in the assessment order. Further, the penalty notice issued under Section 274 read with

Section 271(1)(c) of the Act was issued without deleting or striking off inapplicable part. The Ld. Authorised Representative for the Appellant placed reliance the judgment of the Hon'ble Supreme Court in the case of Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum: 434 ITR 1 (Bombay) in support of his contentions. The Ld. Authorised Representative further submitted that, even otherwise, penalty could not have been levied in the present case as the notice issued under Section 143(2) of the Act did not highlight the issue of capital gains income and the revised return filed by the Appellant was accepted.

6. Per contra, the Ld. Departmental Representative submitted that the Appellant had filed the revised return declaring additional capital gains income only after notice under Section 143(2) of the Act was issued. It was further submitted that the satisfaction for initiating penalty proceedings could be gathered from the assessment order. The Ld. Departmental Representative further submitted that the Appellant had failed to substantiate the explanation offered and therefore, the same was rejected by the Assessing Officer. Thus, the Assessing Officer was correct in levying penalty under Section 271(1)(c) of the Act. The Ld. Departmental Representative further placed reliance on the penalty order and order passed by the CIT(A) 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—vitiating 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 Assessment Order, dated 27/10/2016, passed under Section 143(3) of the Act shows that in relation to initiation of the penalty proceedings Assessing Officer has, paragraph 5 of the Assessment Order, simply stated that '*Hence, in my opinion, it is a fit case for initiation of proceedings under Section 271(1)(c) of the Act*' without specifying whether penalty proceedings have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income. Further, a perusal of the penalty notice, dated 27/10/2016, issued under Section 274 read with 271 of the Act placed before us shows that the aforesaid notice is in the nature of an omnibus show cause notice, issued without deleting or striking off the inapplicable part. 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 69,43,532/- levied under Section 271(1)(c) of the Act. Thus,

Ground No. 1 raised by the Appellant is allowed. Other contentions raised by both the sides, having been rendered academic, do not require adjudication. Accordingly, Ground No. 2 & 3 raised by the Appellant are dismissed as being infructuous.

9. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 05.01.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 05.01.2024
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