

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.Nos.708 & 1089/PUN./2023
Assessment Years 2017-2018 & 2018-2019

Shri Shivaji Dattatray Sonawane, Sonawane Mala, Samangaon Road, Sinnar Phata, Nashik Road, Nashik – 422 101. Maharashtra. PAN ACAPS3868A	vs.	The Income Tax Officer, Ward – 2 (1), Kendriya Rajasva Bhavan, Gadkari Chowk, Old Agra Road, Nashik – 422 002. Maharashtra
(Appellant)		(Respondent)

For Assessee :	Shri Sanket Joshi
For Revenue :	Shri Sourabh Nayak, JCIT

Date of Hearing :	01.02.2024
Date of Pronouncement :	02.02.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

These assessee's twin appeals I.T.A.Nos.708 & 1089/PUN./2023, for assessment years 2017-2018 & 2018-2019, arise against the National Faceless Appeal Centre's [in short "NFAC"] as many orders dated 05th April and 29th September, 2023, having Din & Orders nos. ITBA/NFAC/S/250/2023-24/1051888360(1) and 1056661604(1) respectively; in proceedings u/sec.270A of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case files perused.

2. It emerges during the course of hearing that the assessee's identical sole substantive grievance in both these appeals challenges correctness of learned lower authorities' action imposing the penalties of Rs.1,99,712/- 3,05,952/- in assessment years 2017-18 and 2018-19; respectively. His first and foremost legal argument is in light of the relevant show cause notices; both dated 10.03.2021 that the learned Assessing Officer had nowhere specified the corresponding limb in sub-sec.270A(9) of the Act as he had sought to levy penalties under sub-sec.(8) thereof. Learned counsel has placed both these show cause notices as well as a compilation of case law reading as under :

Sr.	Particulars	Page Nos.
<i>Decisions wherein it has been held that where the specific charge/ limb out of clauses (a) to (f) of section 270A, sub section (9) is not communicated to the assessee in the show cause notice u/s 274 r.w.s. 270A by the A.O., then the penalty order u/s 270A is rendered bad in law –</i>		
1	G.R. Infraprojects Ltd. v. ACIT [D.B. Civil Writ Petition No. 5594/2023]/ Rajasthan High Court dated 02.01.2014	1 – 16
2	Kishor D. Patil v. ITO [ITA Nos. 54 & 55/ PUNE/2023] dated 30.03.2023	17 – 36
3	Satish P. Pawar [ITA Nos. 361 & 362/ PUNE/2023] dated 05.07.2023	37 – 43
4	Schneider Electric South East Asia (HQ) PTE Ltd. v. ACIT [(2022) 443 ITR 186 (Del)(HC)]	44 – 46
5	Greenwoods Govt. Officers Welfare Society v. DCIT [ITA No. 609/Del/2023] dated 26.10.2023	47 – 55
6	Alrameez Construction (P) Ltd. v. CIT [(2023) 202 ITD 379 (Mumbai)]	56 – 63
7	Prem Brothers Infrastructure LLP v. NFAC [(2022) 334 CTR 363 (Del)(HC)]	64 – 66
<i>Decision wherein it has been held that wherein there is any variation of charge/ limb stated in the show cause notice and the final penalty order, then the penalty order is unsustainable in law –</i>		
7	CIT V. Samson Perinchery [392 ITR 4 (Bom)(HC)]	67 – 69
<i>Decision wherein it has been held that the exact charge/ limb of penalty must be communicated to the assessee in the show cause notice u/s 274 and absence of the same, renders the penalty proceedings bad in law –</i>		
8	Mohd. Farhan A. Shaikh v. DCIT [434 ITR 1 (Bom)(HC)]	70 – 101
<i>Decision wherein it has been held that levy of penalty on wrong charge/ limb renders the penalty order bad in law, even though the penalty is leviable on the other limb which was not stated by the A.O. in the penalty order –</i>		
9	Rahul S. Sawale v. ACIT [ITA Nos. 1162 & 1163/ PUNE/2015] dated 31.0.2019	102 – 113

3. The Revenue on the other hand has vehemently argued that the Assessing Officer's identical show cause notices hereinabove only suffer from an unintended omission as he had duly initiated the impugned proceedings u/sec.270A of the Act not only in both these assessments dated 10.03.2021 but also his sec.270A penalty orders have duly pinpointed the corresponding limb in identical paragraphs 7.1 by invoking sec.270A (9) (a) of the Act and, therefore, the assessee hardly stands to gain from the foregoing unintentional mistake in the show cause notices. Mr. Nayak further took us to both these case files and vehemently argued that learned lower authorities have duly heard the assessee. He has not suffered from any prejudice which could vitiate the penalty proceedings before us in these facts.

4. We have given our thoughtful consideration to the foregoing vehement rival stands and find no merit in Revenue's arguments. This is for the precise reason that it has duly come on record in light of the Assessing Officer's corresponding twin identical show cause notices that he had not specified the corresponding limb u/sec.270A(8) read with sub-section(9) thereof as was held in various judicial pronouncements G.R. Infraprojects Ltd. vs. ACIT [D.B. Civil Writ Petition no.5594/2023 - Rajasthan High Court dated 02.01.2014]; Schneider Electric South East Asia (HQ) PTE Ltd. vs. ACIT [2022] 443 ITR 186 (Del.) (HC) and Prem Brothers

Infrastructure LLP vs. NFAC [2022] 334 CTR 363 (Del.) (HC).

We further wish to draw support from hon'ble jurisdictional high court's decision in Mohd. Farhan A. Shaikh vs. DCIT [2021] 434 ITR 1 (Bom.)(HC) (FB) that such a failure on Assessing Officer's part in not specifying the relevant limb at the time of initiation of penalty itself vitiates the entire proceedings being in the nature of an incurable defect. Faced with the situation, we delete the impugned penalties of Rs.1,99,712/- and Rs.3,05,952/-; assessment year-wise, respectively.

5. Delay of 08 days in filing of assessee's former appeal ITA.No.708/PUN./2023 is condoned in the larger interest of justice and in light of the corresponding averments in condonation affidavit.

6. These assessee's twin appeals I.T.A. Nos.708 & 1089/PUN./2023 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 02.02.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 02nd February, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The NFAC, Delhi.
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "B" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.