

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.2002/DEL/2023
(Assessment Year: 2012-13)**

Rupinder Kaur,
R-675, 1st Floor,
New Rajinder Nagar, Central Delhi,
New Delhi – 110 060.

vs.

DCIT, Central Circle 30,
New Delhi.

(PAN : AASPK0367J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Lalit Mohan, CA
Shri Parth Singhal, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 14.02.2024
Date of Order : 19.02.2024

ORDER

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-30, New Delhi dated 18.01.2023 for the assessment year 2012-13 confirming the penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') amounting to Rs.15,22,861/-..


2. At the outset, it is noted that there is a delay of 114 days in filing the appeal before the ITAT. For the reasonable cause for filing the delayed appeal, Id. Counsel for the assessee submitted that Id. CIT (A) has passed the penalty order with the direction that the decision on penalty u/s 271(1)(c) is

however subject to outcome/decision of the application filed by the assessee's husband before the Income Tax Settlement Commission (ITSC) owning the amount of Rs.51,00,000/- taken in the name of assessee as accommodation entry. It has been submitted by the Id. Counsel for the assessee that ITSC passed the order in the case of assessee's husband on 23.06.2023 and subsequent to the aforesaid order, the instant appeal was filed on 11.07.2023 which is within the statutory time period provided under the Act.

3. Upon hearing both the parties and perusing the records, the delay in filing the appeal before the Tribunal is condoned.

4. Although assessee has raised various grounds, at the outset, Id. Counsel of the assessee contended that the notice issued under section 274 read with section 271(1)(c) of the Act is a defective one. The charge has not been specified in the notice, hence referring to various decisions including that of Hon'ble jurisdictional High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. 432 ITR 84 (Del.), Id. Counsel for the assessee pleaded that the penalty order is liable to be quashed.

5. Upon hearing both the parties and perusing the records, we note that the penalty notice contains the following charge :-


OFFICE OF THE
ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-17
Room No.103, First Floor, E-2, A.R.A. Centre, Jhandewalan Extension,
New Delhi – 110 055.

I.T.N.S. 29
Dated : 29.12.2018

F. No.ACIT/CC-17/Delhi/Penalty Notice/2018-19/

NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF THE INCOME TAX ACT, 1961

PAN : AASPK0367J

To

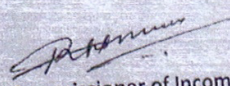
RUPINDER KAUR
R-675 1ST FLOOR
NEW RAJINDER NAGAR
NEW DELHI-110060


Whereas in the course of proceedings before me for the Assessment Year 2012-2013 it appears to me that you.

* have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income Tax Act, 1922 or under Section 142(1)/143(2) of the Income Tax Act, 1961 dated _____

* have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at Room No. 103, First Floor, ARA Centre, Jhandewalan Extension, New Delhi at 11 A.M. on 28.01.2019 and show cause why an order imposing a penalty on you should not be made u/s 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity, or being heard in person or through authorised person, you may show cause in writing on or before the said date which will be considered before order is made u/s 271(1)(c).


Asstt. Commissioner of Income Tax
Central Circle-17, New Delhi



6. We note that in the above notice, the charge has not been specified and it is an omnibus notice. In such circumstances, Hon'ble jurisdictional High Court in the case of Sahara India Life Insurance Co. Ltd. (supra) has held that the penalty order passed is liable to be quashed on account of this defect which is fatal. We further note that Full Bench of Hon'ble Bombay

High Court in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT in ITA No.51 & 57 of 2012 dated 11.03.2021 has held that no specification of charge in the penalty notice leads to same becoming void and penalty on that count is to be deleted. Hon'ble Court held as under :-

“Head Note only :

S.271(1)(c) : Penalty – Concealment – Non-striking off of the irrelevant part while issuing notice under section 271(1)(c) of the Income-tax Act, - Order is bad in law – Assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.”

7. Respectfully following the precedent as above, we set aside the orders of authorities below and decide the issue in favour of the assessee. Accordingly, we direct to delete the penalty.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 19th day of February, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 19th day of February, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-30, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**
