

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.2871/DEL/2023  
(Assessment Year: 2009-10)**

GD Infrabuild Private Limited,  
Room No.409, G.S. Building,  
IGI Airport, Terminal 1, South West Delhi,  
New Delhi – 110 037.

**(PAN : AACCG7164J)**  
(APPELLANT)

vs. ITO, Ward 10 (4),  
New Delhi.

(RESPONDENT)

ASSESSEE BY : Shri Rohit Jain, Advocate  
Shri Shubham Sharma, CA  
Ms. Manisha Sharma, Advocate  
REVENUE BY : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 29.02.2024  
Date of Order : 07.03.2024

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 16.08.2023 for the assessment year 2009-10 confirming the penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') amounting to Rs.1,66,48,513/-.

2. 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 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 Bombay High Court in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT 434 ITR 1 (Bom)(FB), Id. Counsel for the assessee pleaded that the penalty order is liable to be quashed.

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

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

PAN - AACCG7164J

Dated 28.12.21

To M/s G.D. Infravild (P) Ltd.  
11A/2, 2nd Floor,  
Old Rajinder Nagar,  
Delhi - 110060

Whereas in the course of proceedings before me for the assessment year 2009-10 it appears to me that you :-

\*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961, No. .... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

\*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)/13(2) of the Income-tax Act, 1961 No. .... dated .....

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

You are hereby requested to appear before me at RM 337, C.R. Bldg on 27.01.22 and show cause why an order imposing a penalty on you should not be made under Section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized 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.

Inu Copy

Seal

Income Tax Officer  
Ward 12 (1) Range No. 337,  
C. R. Bldg, I. P. Estate  
New Delhi

Income Tax Officer  
Ward 12 (1) Range No. 337,  
C. R. Bldg, New Delhi

4. 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 PCIT vs. Sahara India Life Insurance Co. Ltd. 432 ITR 84 (Del.) 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 (supra) 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.”

5. 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.

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

**Order pronounced in the open court on this 7<sup>th</sup> day of March, 2024.**

**Sd/-  
(CHALLA NAGENDRA PRASAD)  
JUDICIAL MEMBER**

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

**Dated the 7<sup>th</sup> day of March, 2024  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**