

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.6739/Del/2019
(Assessment Year: 2015-16)**

Rohit Baswani, E-335, LGF, East of Kailash, New Delhi (Appellant) PAN:ACJPB5842J	Vs.	ACIT, Circle-32(1), New Delhi (Respondent)
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Assessee by :	Shri R. S. Ahuja, CA
Revenue by:	Shri Vivek Vardhan, Sr. DR

Date of Hearing	10/04/2024
Date of pronouncement	16/04/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.6739/Del/2019 for AY 2015-16, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-11, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 485/18-19 dated 17.07.2019 against the order of assessment passed u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.06.2018 by the Assessing Officer, ACIT, Circle-32(1), New Delhi (hereinafter referred to as 'Id. AO').
2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s 271(1)(c) of the act in the facts and circumstances of the case.
3. We have heard the rival submissions and perused the materials available on record. At the outset, the Id. AR submitted that the Id. AO in the penalty notice had not struck off the inappropriate portion as to whether the assessee

had concealed the particulars of income or furnished inaccurate particulars of income. It is not in dispute that the Id. AO had not struck off the inappropriate portion in the penalty notice specifically mentioning the charge of offence committed by the assessee. The Id. DR vehemently argued that the specific charge of offence has been duly mentioned in crystal clear terms by the Id. AO in the quantum proceedings while framing the addition and hence non-mentioning of the same in the show cause notice issued for penalty u/s 271(1)(c) would not vitiate the penalty proceedings. This issue is no longer res integra in view of the Full Bench Decision of Hon'ble Bombay High Court in the case of Mohd. Farhan A Shaikh vs DCIT reported in 434 ITR 1 (Bom)(FB) dated 11.3.2021. The relevant operative portion of the said judgement is reproduced hereunder:-

"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.

Conclusion:

We have, thus, answered the reference as required by us; so we direct the Registry to place these two Tax Appeals before the Division Bench concerned for further adjudication."

4. In view of the aforesaid Full Bench decision of Hon'ble Bombay High Court, the argument advanced by the Id. DR is already addressed in the said decision and decided against the revenue. The ratio laid down in the aforesaid full bench decision of Hon'ble Bombay High Court squarely applies to the facts of the instant case before us. Hence we direct the Id. AO to delete the penalty levied u/s 271(1)(c) of the Act. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 16/04/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16/04/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi