

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (Accountant Member)
& Shri Vikas Awasthy (Judicial Member)

I.T.A. No. 4503/Mum/2023 (A.Y. 2015-16)

Striver Capital Advisors Private Ltd. 1001, Emerald Heights 32 Union Park Off Sion Trombay Road, Chembur Mumbai-400 071. PAN : AALCS3031R (Appellant)	Vs.	DCIT, Circle 14(3)(4) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Sameer G. Dalal
Department by	Shri Suresh D. Gaikwad Sr. AR
Date of Hearing	13.05.2024
Date of Pronouncement	15.05.2024

ORDER

Per Vikas Awasthy (JM) :-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 13.11.2023, for Assessment Year 2015-16, confirming penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee in appeal has inter alia assailed levy of penalty on the ground of defective notice issued under section 274 read with section 271(1)(c) of the Act.

3. Shri Sameer G. Dalal appearing on behalf of the assessee submitted that the Assessing Officer issued notice under section 271(1)(c) read with section 274 of the Act dated 26.12.2017 (Annexed alongwith appeal file). A perusal of the said notice would show that irrelevant clauses in the preprinted proforma have not been struck off by the Assessing Officer. This makes the notice ambiguous and vague. He placed reliance on the decision in the case of Mohd. Farhan A. Shaikh reported as 434 ITR 1 (Bom)(FB) to contend that non-striking of inapplicable portion in the notice makes the notice defective, penalty proceedings initiated on the basis of defective notice are legally unsustainable.

4. Per contra, Shri Suresh D. Gaikwad, Sr. AR representing the Department strongly defended the impugned order and prayed for dismissing appeal of the assessee.

5. We have heard the submissions made by the rival sides and have examined the orders of the authorities below. We have also examined the notice issued under section 271(1)(c) read with section 274 dated 26.12.2017 placed on record by the assessee. A perusal of the order passed under section 271(1)(c) of the Act dated 27.6.2018 shows that the Assessing Officer has initiated penalty proceedings for furnishing inaccurate particulars of income. Whereas in the notice (supra), the Assessing Officer has mentioned both limbs of section 271(1)(c) i.e. *“Have concealed the particulars of your income orfurnished inaccurate particulars of such income”*. Notice has been issued in preprinted proforma with multiple clauses. The Assessing Officer has not struck off irrelevant portion in the notice making notice vague. Non-striking off irrelevant matter in preprinted omnibus notice renders the notice defective. Once, the substratum for initiating penalty proceedings suffers from incorrigible defect, the proceedings arising there from are vitiated. In the case of Mohd. Farhan A. Shaikh (supra), the Hon'ble Jurisdictional High Court has held that where in the assessment order satisfaction for imposing

penalty on one or the other or both grounds mentioned in section 271(1)(c) of the Act are clearly recorded, the defect in the notice – non striking of the irrelevant matter vitiates the penalty proceedings. For the sake of completeness, the relevant observations of Full Bench of the Hon'ble Jurisdictional High Court are reproduced herein below :-

179. Besides, the prima facie opinion in the assessment order need not always translate into actual penalty proceedings. These proceedings, in fact, commence with the statutory notice under section 271(1)(c) read with section 274. Again, whether this prima facie opinion is sufficient to inform the assessee about the precise charge for the penalty is a matter of inference and, thus, a matter of litigation and adjudication. The solution, again, is a tick mark; it avoids litigation arising out of uncertainty.

180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may not contain reasons for the penalty proceedings. The other course of action is the prevention of defect in the notice—and that prevention takes just a tick mark. Prudence demands prevention is better than cure.

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(l)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitate 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.

182. More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the correct proposition of law.”

6. Thus in the facts of the case and in light of the law expounded by Hon'ble Bombay High Court, we find merit in appeal of the assessee. Hence, we hold the notice dated 26.12.2017 issued under section 274 r.w.s. 271 of the Act for assessment year 2015-16 is bad in law. Consequently, the subsequent proceedings arising there from are vitiated.

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

Order pronounced in the open court on Wednesday the 15th Day of May, 2024.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Vikas Awasthy)
Judicial Member

Mumbai.; Dated : 15/05/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS