

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 388/MUM/2024
(Assessment Year: 2012-13)**

Model Sales Agency Pvt. Ltd.,
275, Mapla Mahal, Thakurdwar Corner,
J S S Road, Girgaon, Mumbai - 400004
[PAN: AAACM3151H]

..... **Appellant**

Income Tax Officer
5(2)(3), Mumbai
Room No. 552, Aaykar Bhavan,
M.K. Road, Churchgate,
Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Appellant : Shri Tanzil R. Padvekar
For the Respondent/Department : Shri H.M. Bhatt
:

Date

Conclusion of hearing
Pronouncement of order : 16.05.2024
: 17.05.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Appellant against the order, dated 29/11/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] pertaining to Assessment Year 2012-13, whereby the Ld. CIT(A) had dismissed the appeal of the Appellant against the Penalty Order, dated 29/03/2019, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') whereby penalty of INR 11,12,400/- was levied on the Appellant.
2. The Appellant has raised following grounds of appeal:

- "1. *On the facts and in law, Ld. Commissioner of Income-Tax (Appeals) [in short CIT(A)] erred in confirming the Penalty Order passed by Ld. Assessing Officer (in short AO) under Section 271(1)(c) of the Act levying Penalty of Rs. 11,12,400/-.*
 2. *On the facts and in law, Ld. AO erred in levying Penalty under Section 271(1)(c) of the Act, when the Penalty has been initiated in gross violation of law as AO failed to inform the Appellant, under which limb of 271(1)(c) the Penalty has been initiated. The Ld. AO has erred by failing to strike off irrelevant limb from the Notice under Section 271(1)(c) of the Act dated 31.03.2015. On this ground alone, the impugned Penalty Order is liable to be quashed and set aside following the full bench decision of the Hon'ble High Court of Bombay in the case of Mohd. Farhan A. Shaikh Vs Dy. CIT, Central Circle, Belgaum, in Income Tax Appeal No. 5 of 2012.*
 3. *On the facts and in law, Ld. CIT(A) erred in confirming impugned Order passed by Ld. AO under Section 271(1)(c) of the Act without appreciating the fact that the mandatory criteria for levying of Penalty under Section 271(1)(c) of the Act is not fulfilled as there is neither concealment of income not furnishing of in accurate particulars.*
 4. *On the facts and in law, Ld. AO failed to appreciate that Penalty proceedings are separate from quantum proceeding and making edition in quantum proceeding would not suo moto make appellant liable for Penalty. The Ld. AO has merely made disallowance of genuine claims made by Appellant. However, the payments have not been found to be non-genuine on this ground alone the impugned Penalty Order is liable to quashed and set aside.*
3. The relevant facts in brief are that assessment under Section 143(3) of the Act was framed for the Assessment Year 2012-13 on the Appellant vide Assessment Order, dated 31/03/2015. Further, penalty proceedings under Section 271(1)(c) of the Act were initiated against the Appellant and notice, dated 31/03/2015, was issued under Section 274 read with Section 271(1)(c) of the Act. The aforesaid penalty proceedings culminated into passing of the Penalty Order, dated 29/03/2019, under Section 271(1)(c) of the

Act whereby penalty of INR 11,12,400/-, being 100% of tax sought to be evaded on the addition of INR 36,00,000/-, was levied by the Assessing Officer.

4. Being aggrieved, the Appellant preferred appeal before CIT(A) against the levy of above penalty. Vide order, dated 29/11/2023, the CIT(A) dismissed the appeal for want of explanation and documentary evidence furnished by the Appellant despite several opportunities having been granted to the Appellant.
5. Being aggrieved, by the order dated 29/11/2023, passed by the CIT(A) dismissing the appeal and confirming levy of penalty of INR 11,12,400/- levied under Section 271(1)(c) of the Act.
6. When the appeal was taken up for hearing, at the outset, the Ld. Authorised Representative for the Appellant invited our attention to the penalty notice, dated 31/03/2015, issued under Section 274 read with Section 271(1)(c) of the Act and submitted that the levy of penalty under Section 271(1)(c) of the Act cannot be sustained in view of the judgment of Full Bench of the Hon'ble Bombay High Court in the case of **Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum: 434 ITR 1 (Bombay)**, as the aforesaid penalty notice has been issued without deleting or striking off inapplicable part. While the Ld. Departmental Representative relied upon the Assessment Order, dated 31/03/2015 and the Penalty Order, dated 29/03/2019 to support the stand of the Revenue, the Learned Departmental Representative fairly acknowledged the fact that inapplicable portion has not been deleted or struck off in the penalty notice, dated 31/03/2015, issued under Section 274 read with Section 271(1)(c) of the Act.
7. We have perused the record, considered the rival submissions and examined the legal position. The full Bench of the Hon'ble Bombay

High Court in the case Mohd. Farhan A Shaikh Vs. DCIT (supra) has held that a mere defect in the notice - not striking off the irrelevant matter, would vitiate the penalty proceedings. The relevant extract of the aforesaid judgment reads as under:

"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(1)(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 Appellant. 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 Appellant must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness." (Emphasis supplied)*

8. A perusal of the penalty notice, dated 31/03/2015, issued under Section 274 read with Section 271(1)(c) of the Act would show that it in an omnibus show-cause notice issued without deleting or striking off the inapplicable part. Thus, the statutory notice issued to the Appellant does not inform the Appellant about the charge against the Appellant – whether penalty under Section 271(1)(c) of the Act is sought to be levied for concealment of particulars of income or furnishing inaccurate particulars of income. Similarly, in paragraph 4.1 of the Assessment Order, dated 31/03/2015, passed under Section 143(3) of the Act it has been stated that *'this is a fit case for levy of penalty within the meaning of provisions under Section 271(1)(c) of the Act for concealment and also for furnishing of inaccurate particulars of income by the Appellant. Accordingly, the*

penalty proceedings under Section 271(1)(c) of the Act is separately initiated'. Thus, there is no clarity whether the penalty proceedings were initiated for concealment of particulars of income or furnishing inaccurate particulars of income.

9. In view of the above, we find merit in the contention advance on behalf of the Appellant that penalty of INR 11,12,400/- levied under Section 271(1)(c) of the Act cannot be sustained as per the judgment of the Full Bench decision of the Hon'ble jurisdictional High Court in case of Mohammed Farhan A Shaikh Vs DCIT (supra). Thus, Ground No. 2 and 3 raised by the Assessee in appeal are allowed, and Ground No. 1, 4 and 5 are dismissed as being infructuous.
10. In the result, in terms of paragraph 9 above, the appeal preferred by the Assessee is allowed.

Order pronounced on 17.05.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 17.05.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai