

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

ITA NO.4579/MUM/2023
Assessment Year :2009-10
ITA NO.4575/MUM/2023
Assessment Year : 2010-11

M/s. Gini & Jony Limited,
A601, Citi Point, Andheri Kurla Road,
Mumbai – 400 059
PAN:AAACG-1295-N

---- Appellant

Vs.
Deputy Commissioner of Income-tax,
Circle – 9(3)(2),
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

--- Respondent

Appellant by : Shri Rakesh Joshi
Respondent by : Ms. Sujatha Iyengar, Sr.AR
Date of Hearing : 22/05/2024
Date of Pronouncement : 22/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed these appeals challenging the orders passed by Ld.CIT(A), NFAC, Delhi confirming penalty of Rs.11.00 lakhs and Rs.28.90 lakhs levied u/s 271(1)(c) of the Act for assessment years 2009-10 and 2010-11 respectively. Both the appeals were heard together and hence, they are being disposed of by this common order, for the sake of convenience.

2. The assessee, inter alia, has assailed levy of penalty on the ground that the notice issued u/s. 271 r.w.s. 274 of the Act is defective. Shri Rakesh Joshi appearing on behalf of assessee submitted that the Assessing Officer while

issuing notice has failed to strike off irrelevant clauses in the notice. Accordingly, he submitted that the notice is ambiguous with regard to charge mentioned in 271(1)(c) of the Act. He asserted that no penalty can be levied on the basis of defective notice. In support of the contention that penalty levied on the basis of defective notice is not sustainable, the Id. Authorized Representative of the assessee placed reliance on the Full Bench decision rendered in the case of Mohd. Farhan A. Shaikh vs. DCIT, 434 ITR 1(Bom).

3. On the contrary, Ld D.R vehemently defended the orders passed by Ld CIT(A) in both the years.

4. We have heard the rival submissions. The Ld A.R furnished copies of notices issued by the AO u/s 271(1)(c) of the Act for both the years. A penalty u/s 271(1)(c) of the Act is levied on two charges, viz., (a) for concealment of particulars of income or (b) for furnishing inaccurate particulars of income. It is necessary for the AO to mention the limb under which the penalty is sought to be levied. A perusal of notices would show that they have been issued in a pre-printed proforma and the AO has failed to strike off inapplicable limb of the charge mentioned in sec. 271(1)(c) of the Act.

5. The contention of Ld A.R is that non-striking of irrelevant charge in the pre-printed proforma would make the penalty notice vague and defective. We notice that the above said contention would get support from the decision of the Hon'ble Jurisdictional Bombay High Court in the case of Mohd. Farhan A. Shaikh (supra), wherein it is 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, a mere defect in the notice – not

striking of the irrelevant matter would vitiate 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(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 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.”*

Thus, in the facts of the present cases and in light of the law expounded by Hon'ble jurisdictional Bombay High Court, we find merit in the legal ground urged by the assessee. Accordingly, we hold the notices issued for both the

assessment years under consideration u/s.274 r.w.s. 271 of the Act are bad in law. Consequently, the subsequent proceedings arising there from are vitiated. Accordingly, we quash the penalty orders passed by the tax authorities in both the years under consideration.

6. In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on 22nd May, 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER
Mumbai, Date : 22nd May, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai