

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

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

ITA 3838/Mum/2023  
(Assessment year: 2011-12)

<b>Swaranjit Singh Putiani, Sunder Nagar, Kalina, Santacruz (East)-400 098 Kalyan West- 421 301 AADPP6438N</b>	<b>vs</b>	<b>ITO 22(3)(4), G Block, BKC, Bandra Kurla Complex, Bandra East, Mumbai-400 051</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Vishesh Srivastav – Advocate

Respondent by : Ms. Sujatha Iyengar SR.AR

Date of hearing : 22/05/2024

Date of pronouncement : 29/ 05/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre, Delhi (NFAC) [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), date of order 13.06.2023 for Assessment Year 2011-12. The impugned order was emanated from the order of the Id. Income-tax Officer 22(3)(4), Mumbai (in short, 'the A.O.')

passed under section 271(1)(c) of the Act date of order 27/06/2019.

2. The assessee has taken the following grounds of appeal:-

*“That Ld. NATIONAL FACELESS APPEAL CENTRE (NFAC), Delhi [hereinafter referred as “CIT(A)” erred in upholding the Penalty Order dated 27<sup>th</sup> June, 2019 passed under section 271(1)(c) of the Income Tax Act, 1961 vide order no ITBA/NFAC/S/250/2023-24 1053682427(1) dated 13/06/2023.*

*2. The Ld. CIT(A) has acted arbitrarily in respect of levying Penalty of Rs.77,297/-.*

*3. The Ld. CIT(A) has erred upholding the penalty order as show cause notice did not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income and acted arbitrarily in respect of levying Penalty of Rs.77,297/-.”*

3. The brief fact of the case is that the assessment was completed under section 143(3) read with section 147 of the Act with an addition of capital gain amount to Rs.2,24,019/-. After the assessment, the penalty proceedings were initiated under section 271(1)(c) of the Act and the penalty was calculated at 100% of the tax sought to be evaded at Rs.77,297/-. Being aggrieved, the assessee filed an appeal before the CIT(A) with the grounds that there is no mens rea in concealed income. But Ld. CIT(A) upheld the penalty order and dismissed the grounds of the assessee. Being aggrieved, the assessee filed an appeal before us.

4. We heard the rival submissions and considered the documents available in the record. The Ld. AR agitated the legal issue before the Bench related to defective notice issued under section 274 read with section 271(1)(c) of the Act. Copy of the notice is duly annexed herewith:-

Penalty/35/19  
2018-19

LT.NS-29

आयकर अधिनियम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन सूचना  
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF  
THE INCOME TAX ACT, 1961

सेवा में /  
PAN : AADPP6438N

To,  
Swaranjit Singh Putni  
B/29/116, Sunder Nagar,  
Kalina, Santacruz (East)  
Mumbai - 400 098

आयकर कार्यालय/Office of the  
Income Tax Officer  
Ward -22(3) (4),  
Room No. -307,  
Piramal Chamber, Lalbaug,  
Mumbai 400012.

तारीख/Dated : 24.12.2018

यदि कर विचारण वर्ष ..... के संबंध में मेरे यहां होने वाली कार्रवाई के दौरान मुझे प्रतीत होता है कि आपने :-

Whereas in the course of proceedings before me for the Assessment Year 2011-12 it appears to me that You:-

\*बिना उचित कारण के यह ध्यान विचारणीय नहीं है जो आपको भारतीय आयकर अधिनियम, 1922 की 22(1), 22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थीक या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961 की धारा 139(2)/149 के अधीन दी गई सूचना में ..... या ..... अनुसार प्राथमिक करणी थीक अपना उचित कारण के बिना आपने दिए गए समय के अन्तर्गत और एक धारा 139(1) या इन धारा की सूचना द्वारा अंतिम प्रति में विचारणीय नहीं है।

\* 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)/149 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

\*बिना उचित कारण के आपको भारतीय आयकर अधिनियम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना में ..... या ..... का अनुपालन नहीं किया है।

\* 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) / 143(2) of the Income-Tax Act, 1961, No. .... dated .....

\*आपकी आय के बारे में छिपा दिए हैं या ..... इस प्रकार की आय के बारे में छिपा दिए हैं।

\* have Concealed the particulars of your income or ..... Furnished inaccurate particulars of such income.

\*आपको एकद्वारा सूचित किया जाता है कि या ..... 200 ..... को अपने ..... ब.व./पू.व. में आप के करवापन में उपस्थित हो और कारण बताएँ के आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर एक नगण्य या अल्प न्यून न दिया जाया यदि आप स्वयं उपस्थित होकर या प्रविष्ट प्रतिनिधि द्वारा सुनवाई के लिए दिए गए समय का लाभ नहीं उठाना चाहते हैं तो एक तारीख को या उसके पूर्व लिखकर इनका कारण बताएँ, बिन पर धारा 271 के अधीन कोई भी न्याय अथवा न्याय के पूर्व विचार किया जाएगा।

You are hereby requested to appear before me On 16.01.2019 at 11.30 A.M. 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(1)(c)



(ANIL D. TAWDE)  
Income Tax Officer,  
Ward -22(3)(4), Mumbai.

\* जो शब्द या परिभाषाएं हों उन्हें काट दें।  
\* Delete in appropriate words and Paragraphs.

4.1 The Ld.AR argued that Ld.AO had not specified the limb whether 'concealment of income' or 'inaccurate particulars of income' under section

271(1)(c) of the Act. So, the Proviso is not directly implemented for the assessee during issuance of notice under section 271(1)(c) of the Act. The issue is squarely covered by the judgement of Hon'ble **Jurisdictional High Court** in the case of **Mohammed Farhan A. Shaikh Vs. PCIT (125 taxamnn.com 253) vide order dt. 11.3.2021**. The relevant paragraphs are reproduced as 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—vitiating 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.”*

4.2. The Ld.DR argued but was unable to submit any concerning judgement against the order of the jurisdictional High Court.

4.3. The issue is squarely covered by the jurisdictional High Court which is legally binding on us. Ld. AO did not mention the nature of concealment in the notice issued u/s 274/271(1)(c). The counsel laid down that in the absence of such specific notice, the notice would be invalid. As held in various judicial pronouncements including the decision of Hon'ble **Karnataka High Court** in **CIT V/s SAS's Emerald Meadows (73 Taxmann.com 241)** against which Special Leave Petition (SLP) filed by the department stood dismissed by Hon'ble Supreme Court which is reported as **73 Taxmann.com 248**. The notice u/s 274/271(1)(c) of the Act is not carrying the specific limb. Therefore, this is a case where both the parts of the offences i.e., concealment of income as well as furnishing of inaccurate particulars of income were involved.

Finally, respectfully following the binding judicial precedents as cited aforesaid, we are of the considered opinion that the impugned penalty is not sustainable on legal grounds. Hence, by deleting the same, we allow the appeal of the assessee.

5. In the result, the appeal of the assessee being **ITA No.3838/Mum/2023** is allowed.

Order pronounced in the open court on 29<sup>th</sup> day of May 2024.

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 29/05/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**