

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA Nos. 1849 & 1850/Del/2024  
(Assessment Years: 2015-16 & 2017-18)**

Ujala Credit Co-operative Society Ltd, C-410, 4 <sup>th</sup> Floor, PP Tower, Netaji Subhash Place, Pitampura, Delhi (Appellant) <b>PAN:AAAAU4592L</b>	Vs. National Faceless Appeal Centre, Delhi  (Respondent)
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Assessee by : Shri Gaurav Jain, Adv  
Ms. Bharti Sharma, CA

Revenue by: Shri Manish Tiwari, Sr. DR

Date of Hearing 06/06/2024

Date of pronouncement 12/06/2024

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA Nos.1849 and 1850/Del/2024 for AY 2015-16 and 2017-18, arise out of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 18.03.2024 against the order of assessment passed u/271(1)(c) and 270A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 08.12.2021 and 17.03.2022 by the Assessing Officer, ACIT, Circle-40(1), New Delhi (hereinafter referred to as 'Id. AO').

2. Though the assessee has raised several grounds of appeal, the only effective issue to be decided in this appeal is as to whether the Id. NFAC was justified in confirming the levy of penalty u/s 271(1)(c) of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee vide Ground No.1 had raised a preliminary objection that the show cause notice issued for penalty u/s 274 read with section 271(1)(c) of the Act had not struck off the inappropriate portion as to whether the assessee had concealed the particulars of income or furnished inaccurate particulars of income. We find that the Id. AR placed on record the show cause notice issued for penalty u/s 274 read with section 271(1)(c) of the Act dated 30.12.2017 which is enclosed in Page 634 of the Paper Book, wherein it is very clear that the Id. AO had not specifically mentioned the offence committed by the assessee by striking off the irrelevant portion i.e. whether the assessee had concealed his particulars of income or had furnished inaccurate particulars of income. Now the short question that arises is whether non-striking off of the irrelevant portion in the penalty notice by not specifically mentioning the offence committed by the assessee, would become fatal to 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 the instant case, on perusal of the penalty notice placed on record dated 30.12.2017, it is evident that the Id. AO had not struck off the irrelevant portion thereon mentioning the specific offence committed by the assessee. The ratio laid down in the aforesaid decision of Hon'ble 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. Since the relief is granted for Ground No. 1 itself, there is no need to separately adjudicate the other grounds raised by the assessee.

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

**ITA No. 1850/Del/2024 – Asst Year 2017-18**

6. The only issue to be decided in this appeal is as to whether the Id. NFAC was justified in confirming the levy of penalty u/s 270A of the Act in the facts and circumstances of the instant case.

7. We have heard the rival submissions and perused the materials available on record. The assessee is a Co-operative Society with the primary objective to create funds to be lent to members, to provide facilities for exercise of thrift and savings to members, managing loans, providing credit facilities to members. The return of income for the Asst Year 2017-18 was filed by the assessee declaring loss of Rs 10,54,75,062/-. The quantum assessment order was completed u/s 143(3) of the Act on 19.12.2019 determining total loss at Rs 10,35,32,454/- after making the following additions / disallowances:-

- a) Disallowance of 10% of miscellaneous expenses on adhoc basis – Rs 1,12,990/-
- b) Disallowance of 10% of business promotion expenses on adhoc basis – Rs 4,01,678/-
- c) Disallowance of 10% of Conveyance and Travelling expenses on adhoc basis – Rs 3,58,650/-
- d) Disallowance of 20% of Communication expenses on adhoc basis – Rs 5,43,803/-
- e) Disallowance of 10% of Direct operational expenses on adhoc basis – Rs 5,25,487/-

8. Penalty proceedings u/s 270A of the Act stood initiated by the Id. AO for misreporting of income in respect of each of the aforesaid disallowances. A show cause notice u/s 274 read with section 270A of the Act was issued by the Id. AO on 19.12.2019 initiating penalty for under reporting of income in consequence of misreporting.

9. The aforesaid quantum assessment was accepted by the assessee by not preferring any further appeal before the Id. NFAC.

10. The Id. AO proceeded to levy penalty u/s 270A of the Act vide order dated 9.12.2021 in the sum of Rs 13,80,610/- being 200% of tax payable on under reported income as per the provisions of section 270A(8) of the Act. This order was duly confirmed by the Id. NFAC.

11. At the outset, we find that in the show cause notice issued u/s 274 read with section 270A of the Act, the Id. AO had not bothered to mention the specific sub-clause under which the assessee's case falls. The provisions of section 270A(9) of the Act clearly define mis reporting of income and hence the Id. AO is duty bound to clearly mention in the show cause notice itself as to which of the sub-clauses in sub-section (9) get attracted in the facts of the present case. Hence it could be safely concluded that the show cause notice issued by the Id. AO is very vague. Further, we find that the entire disallowance of expenses has been made by the Id. AO in the quantum proceedings only on an estimated basis by making adhoc disallowances. Hence the assessee's case squarely falls under the exception provided in section 270A(6)(b) of the Act, wherein the assessee would be entitled for immunity from levy of penalty u/s 270A of the Act. On bare reading of provisions of section 270A of the Act, we find that for under reporting of income, the assessee is either entitled for immunity or liable to pay penalty at a lesser rate as a percentage of tax payable. Whereas for misreporting, the assessee would be liable for penalty at the rate of 200% of tax payable on under reported income. However, this would come into operation only when the Id. AO clearly mentions in the show cause notice itself as to which of the sub-clauses in sub-section (9) get attracted to the facts of the instant case. This is conspicuously absent in the show cause notice. In any case, the issue in dispute is no longer res integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of Schneider Electric South East Asia (HQ) Pte Ltd vs ACIT in W.P.(C ) 5111/2022 & C.M. Nos. 15165-15166/2022 dated 28.3.2022 wherein it was held as under:-

*"6. Having perused the impugned order dated 09 March, 2022, this Court is of the view that the Respondents' action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any reason as in the penalty notice the Respondents have failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated.*

*7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary."*

11.1. We find that the ratio laid down by the Hon'ble Jurisdictional High Court in the case of Schneider Electric supra squarely applies to the facts of the instant case.

12. Similar view was taken by the Hon'ble Jurisdictional High Court in the case of Prem Brothers Infrastructure LLP vs NFAC reported in 288 Taxman 768 (Del) wherein it was held as under:-

*"7. This Court is of the opinion that the only addition in the assessment order framed by Respondent No. 1 is in respect of disallowance under section 14A of the Act. The Petitioner has made a disallowance of Rs. 3,20,14,010/- which was recomputed by the Assessing Officer at Rs. 6,82,45,759/-. Thus, this is a case where the amount of underreporting of income is consequent to increase in the disallowance voluntarily estimated by the assessee. This court is conscious of the fact that there can be cases where underreporting of income may result in misreporting of income, however, in peculiar facts of the present case, the underreporting allegedly done by the assessee cannot amount to misreporting as the assessee had furnished all the details of the transactions relating to disallowance made under section 14A of the Act and the AO as well as assessee has used the same details to arrive at different conclusions i.e. differing quantum of disallowances under section 14A of the Act. This by no stretch of imagination can be held to be 'misreporting'.*

*8. This Court also finds that there is not even a whisper as to which limb of section 270A of the Act is attracted and how the ingredient of sub-section (9) of section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the penalty order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary."*

12.1. In the instant case before us, there is no dispute that the assessee had indeed furnished the complete details of the disputed expenses with supporting evidences during the course of quantum assessment proceedings before the Id. AO. These details are enclosed in Pages 50 to 346 of the Paper Book. Hence the ratio laid down by the Hon'ble Jurisdictional High Court in the case of Prem Brothers supra squarely applies to the facts of the instant case.

13. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation to cancel the levy of penalty u/s 270A of the Act in the facts and circumstances of the instant case as the penalty notice is very vague and hence becomes fatal to the proceedings. Accordingly the assessee would be entitled for relief on this technical aspect. Since relief is granted to the assessee on this technical issue, the other legal and factual grounds raised by the assessee need not be gone into and they are hereby left open.

14. In the result, the appeal of the assessee in ITA No. 1850/Del/2024 for Asst Year 2017-18 is allowed.

15. To sum up, both the appeals of the assessee are allowed.

Order pronounced in the open court on 12/06/2024.

-Sd/-  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 12/06/2024

A K Keot

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

ASSISTANT REGISTRAR  
ITAT, New Delhi