

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 938/MUM/2024  
Assessment Year: 2015-16**

Ritu Multitrade Services Pvt. Ltd. 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai – 400025 (PAN : AAACR1995C)	Vs.	Income Tax Officer, Ward 8(1)(2), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Devendra Jain, Advocate  
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 25.06.2024  
Date of Pronouncement : 28.06.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1058835467(1) dated 18.12.2023 passed against the penalty order by Income Tax Officer, Ward 8(1)(2), Mumbai, dated 23.05.2018 for Assessment Year 2015-16, u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. Grounds taken by the assessee are reproduced as under:

- 1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in deciding the appeal.*

2. *On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the penalty levied of Rs. 10,46,312/- (@100%) by the ld. Assessing Officer without appreciating the facts of the case.*
3. *On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in passing the impugned appellate order without application of mind by taking the wrong grounds of appeal of in para 3 of the order.*

2.1 Assessee has also raised an additional ground by application dated 19.06.2024 which is purely legal in nature and does not require examination of additional facts. The said additional ground is reproduced as under:

*“1. In the facts and circumstances of the case and in law, the Learned Assessing Officer had erred in initiating the penalty proceeding by issuing the impugned show cause notice dated 30.11.2017 under section 274 read with section 271(1)(c)- without striking off the irrelevant/in-applicable limb; thereby issuing a defective notice which is bad in the eyes of law as held by Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh vs. DCIT [2021] 125 taxmann.com 253 (Bombay) and several other binding judicial precedents.”*

3. The additional ground raised by the assessee is purely legal in nature and therefore is admitted for adjudication. We first take up this additional ground which is in respect of challenging the imposition of penalty of Rs.10,46,312/- u/s.271(1)(c) of the Act, which liable to be quashed since Ld. Assessing Officer has failed to specify the charge in the notice issued u/s.274 r.w.s. 271(1)(c) as held by Hon'ble Jurisdictional High Court of Bombay in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021)125 taxmann.com 253(Bom).

4. Ld. Counsel for the assessee referred to the notice, scanned copy of which is reproduced as under:

**Notice under Section 274 r.w.s.271 (1)(C) of the Income Tax Act, 1961**  
Office of the  
Income tax officer-8(1)(2),  
Aayakar Bhavan, Room No. 662, 6<sup>th</sup> Floor, M.K.Road, Mumbai - 400 020

Date: 30.11.2017

Pen./... /2017-18

To,  
M/S. Ritu Multitrade Service Pvt Ltd  
396, Kamat Industrial Estate,  
Veer Savarkar Marg, Mumbai

**PAN : AAACR1995C**

A.Y: 2015-16

Sir,

Whereas in the course of proceedings before me for the assessment year it appears to me that you:-

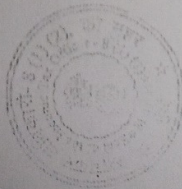
\*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice under section 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961, No. .... dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by said section 139(1) or by such notice.

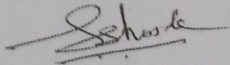
\*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the income Tax Act, 1961.

\*Have concealed the particulars of your Income or ..... furnished inaccurated particulars of such Income.

You are hereby requested to appear before me at **11.00 A.M. on 11/12/2017** 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).

(Seal)



  
(Sudhakar B. Mhasde)  
Income Tax Officer 8(1)(2)  
Mumbai

5. The said notice is dated 30.11.2017. He thus, referring to the said notice submitted that no specific charge has been made out by the Ld. AO for imposition of penalty. He placed reliance on several judicial precedents including that of the Hon'ble jurisdictional High Court of Bombay in the case of Mohd. Farhan A. Shaikh (Supra), wherein the Hon'ble Court had come to the conclusion that unless the charge against the assessee is specific, the same could not be maintained. Thus, on this sole technical defect in the notice issued u/s. 274 read with section 271(1)(c) of the Act, the penalty so imposed is ought to be deleted.

6. Per contra, Ld. Sr. DR placed reliance on another decision of Hon'ble Jurisdictional High Court of Bombay in the case of Veena Estate (P) Ltd. Vs. CIT (2024) 158 taxmann.com 341 (BOM) to counter the submissions made by the Ld. Counsel for the assessee. She submitted that according to this decision, it is not a case of any real prejudice or a case of breach of principles of natural justice. The plea of defect in the notice cannot be an empty plea. Such plea can be accepted only when a demonstrable prejudice was to be set out by the assessee which would go to the root of the adjudication. According to her, in the said decision, the test of prejudice is inapplicable in the facts of the case. Thus, according to her, there is no defect in the notice so issued and the penalty so imposed is rightfully done by the Ld. Assessing Officer.

7. In the rebuttal, Ld. Counsel for the assessee strongly asserted that the facts of the case in the decision of Veena Estates (P) Ltd. (Supra) are peculiar and cannot be applied in general to every other case. He referred to para 1 of the said order to point out the

peculiarities of the facts involved in this case. For this, from the first para, he read out the following:

*“The question is as to whether an alleged defect in the notice issued to the appellant u/s.271(1)(c) r.w.s.274 of the Act, in regard to which the appellant had never raised an objection from the very inception, i.e., since last 30 years (from 19.08.1993) can now be permitted to be raised, in the absence of any prejudice being caused to the appellant assessee.”*

7.1. He further pointed out from para 3 of the said order that the appeal was admitted by the Hon’ble Court by order dated 14.09.2004 on the substantial question of law raised therein. He further referred to para 4 to point out that during the pendency of the hearing, it was only by oral application that a technical plea of vagueness in the notice was raised before the Hon’ble Court, thereby the question was recorded by passing an order on 13.07.2023 which is almost 20 years after the admission of the appeal along with its substantial question of law.

7.2. Ld. Counsel then referred to para 34 on the observation made by the Hon’ble Court where the Court questioned itself as to-

*“Should the Court now after more than 20 years of the order being passed by the Tribunal accept the contention as urged on behalf of the assessee that in these circumstances, the Court should accept the notice as issued to the assessee u/s.274 of IT Act was defective, and hence the proceedings would stand covered by the decision of the Coordinate Bench in this Court in Ventura Textiles Ltd. (Supra)”.*

7.3. On this above questions raised by the Hon’ble Court unto itself, it expressed its opinion in para 35 to point out that case of Ventura Textile Ltd. was a case wherein the Court was considering an appeal u/s.260A of the IT Act, whereby for the first time an issue was raised as to whether the order passed u/s.271(1)(c) of the IT Act was bad in view of the fact that both, at the time of initiation as well as at the time of imposition of the penalty, the Assessing Officer was not clear as to which limb of section 271(1)(c) was attracting. It is in this context, the Division Bench of this Court considered the decision in

regard to the two ingredients of Section 271(1)(c) being attracted in a notice to be issued for invoking the provisions for levy of penalty.

7.4. Ld. Counsel, further pointed out from para 63, the observation made by the Hon'ble Court -

*“Certainly such grievance cannot be raised, i.e., after 23 years, to be new invention, after the Assessing Officer had decided the issue.”*

7.5. Thus, by pointing out the above referred peculiarities of facts and circumstances in the case of Veena Estates (P) Ltd. (Supra), Ld. Counsel distinguished its applicability in the present case of the assessee, as contended by the Ld. Sr.DR. He further submitted that at the time of issuing the notice u/s.274 r.w.s. 271(1)(c), Assessing Officer is not aware of the fact as to whether assessee is going in appeal or not on the quantum additions made. Hence, the notice so issued for initiating penalty proceedings must contain a specific charge out of the two charges contained in section 271(1)(c) for imposing a penalty on the assessee.

8. We note that in the present case before us, the facts and circumstances are altogether different from the peculiar set of facts as contained in the case of Veena Estates (P) Ltd. pointed out by the Ld. Counsel, narrated above. The observations and findings arrived at by the Hon'ble Court in that case are specific to those peculiar set of facts. In the case of Mohd. Farhan A. Shaikh (Supra), the Hon'ble Jurisdictional High Court of Bombay had held 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.”*

9. We therefore, respectfully following the judicial precedent in the case of Hon'ble Jurisdiction High Court of Bombay in the case of

Mohd. Farhan A. Shaikh (Supra) delete the penalty imposed in the present case, since similar facts are present in this appeal. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 28 June, 2024

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 28 June, 2024***

*MP, Sr.P.S.*

**Copy to :**

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

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai