

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH MUMBAI**  
**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 716/MUM/2024**  
**Assessment Year: 2012-13**

Ashok Kumar Jain, Office A-5, Pink Apartments, Off. J.P, Road, 7 Bungalows, Andheri (W), Mumbai – 400 061 (PAN : AACPJ8952G)	Vs.	Income Tax Officer, Ward – 24(1)(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : None  
Revenue : Shri Manoj Kumar Sinha, Sr.DR

Date of Hearing : 30.07.2024  
Date of Pronouncement : 31.07.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1059187243(1), dated 29.12.2023 passed against the penalty order by the Income Tax Officer, Ward-24(1)(2), Mumbai, u/s. 271(1)(c) of the Income-tax Act (hereinafter referred to as the “Act”), dated 29.03.2019 for Assessment Year 2012-13.

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

- “1. The ld. CIT(A) erred in upholding legality of the penalty order. In doing so, he did not appreciate that the ITO
- in the order made u/s 143(3) of the Act recorded his satisfaction for initiating penalty proceedings on the ground that the appellant has furnished inaccurate particulars of income;

- *in the notice u/s 274 r.w.s. 271 of the Act did not score out the limbs of section 271(1)(c) of the Act under which the appellant was considered to be in default; and*
- *in the order levying penalty, firstly he considered the appellant to be in default for furnishing inaccurate particulars of income and ultimately levied penalty for concealment of income which change of stand is not permissible as held by the jurisdictional high court in the case of CIT Vs. Shri Samson Perinchery in ITA No. 154 of 2014 dt. 05.01.2017.*

2. *The ld. CIT(A) erred in upholding the action of the ITO of treating the appellant to be in default u/s 271(1)(c) of the Act and consequently erred in confirming the levy of penalty of Rs. 12480/-.*

*2.i. In doing so, he did not appreciate that the evidence & the details furnished and the submissions made in the course of assessment/ penalty/ appeal proceedings were not dislodged and nothing has been brought on record as to how the particulars furnished were not accurate, not exact or correct, not according to truth or erroneous warranting levy of penalty.*

*3. Further in doing so, the ld. CIT(A) did not appreciate that merely because the ITO was not satisfied with the explanation given by the appellant with regard to utilisation of loan, this by itself, will not amount to furnishing inaccurate particulars of income as held by the Apex Court in the case of Reliance Petro Products (P) Ltd. reported in 322 ITR 158 (SC).*

*4. Moreover, the ld. CIT(A) did not appreciate that the facts narrated in para 4 & 5 of the penalty order which led to levy of penalty are not the facts of the appellant.*

3. A penalty of Rs.12,480/- was imposed on the assessee, u/s. 271(1)(c) of the Act. In this respect, assessee has challenged the imposition of said penalty on the ground that notice dated 30.03.2015 issued u/s.274 r.w.s. 271(1)(c) is bad in law which does not specify the charge for which penalty proceedings were taken up. Copy of the said notice is placed on record and was referred before us to demonstrate that the charge has not been specified for the penalty proceeding as to whether it is for concealment of particulars of income or for furnishing of inaccurate particulars of income. The notice dated 30.03.2015 is reproduced as under:

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF  
THE INCOME TAX ACT 1961**

PAN : AACPJ 8952 G

Office of the  
Income Tax Officer – 24(1)(2),  
Room No. 605, 6<sup>th</sup> floor,  
Piramal Chamber, Mumbai-12.

Date: 30/03/2015

To,

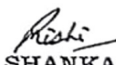
SHRI ASHOK KAILASH JAIN  
A/5, PINK APARTMENT 1<sup>ST</sup>  
FLOOR OFF J.P ROAD  
7 BUNGLOWS ANDHERI (WEST)  
MAHARASHTRA – 400061.

Whereas in the course of proceedings before me for the assessment year 2012-13 it appears to me that you have concealed the particulars of your Income or furnished inaccurate particulars of such Income.

You are hereby requested to appear before me at ROOM NO 605, 6<sup>th</sup> Flr., Piramal Chambers, Lal Baugh, Mumbai – 400012. on 30/04/2015 at 12.50 PM 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 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



  
(RISHI SHANKAR)  
Income Tax Officer - 24(1)(2)  
Mumbai

4. We heard the ld. Sr. DR and perused the material on record to take up the matter *expate qua* the assessee. The issue raised before us is no longer *res integra* and has been dealt in plethora of cases. In a recent order by the Coordinate Bench of ITAT Mumbai in the case of Ritu Multitrade Service Pvt. Ltd. in ITA No.938/Mum/2024 dated 28.06.2024 (where the undersigned Accountant Member is the author) identical issue was dealt with by considering the decisions of Hon'ble Jurisdictional High Court of Bombay in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021)125 taxmann.com 253 (Bom) and Veena Estate (P) Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bom).

4.1. The relevant observations and findings from the said decision of the Coordinate Bench are extracted below:

*“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).....*

*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.*

5. Considering the identical set of facts in the present case and by adopting judicial consistency in terms of the above decision of the Coordinate Bench, the penalty so imposed is deleted.

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

Order is pronounced in the open court on 31 July, 2024

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 31 July, 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