

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

**ITA No.2092/Del/2019
(Assessment Year: 2010-11)**

Late Paramjeet Singh Chawala (Gurneet Chawla legal heir), C/o. R. C. Rai & Associates, 203, 2 nd Floor, Akashdeep 26A, barakhamba Road, New Delhi (Appellant) PAN:ACWPC3161C	Vs. DCIT, Central circle-II, Faridabad (Respondent)
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Assessee by :	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv
Revenue by:	Shri Rajesh Danesta, Sr. DR
Date of Hearing	07/10/2024
Date of pronouncement	10/10/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2092/Del/2019 for AY 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals)-3, Gurgaon [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 423/CIT(A)-3/GGN/2017-18 dated 31.12.2018 against the order of assessment passed u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 19.12.2018 by the Assessing Officer, DCIT, Central Circle-1, Faridabad (hereinafter referred to as 'Id. AO').
2. The assessee vide Ground No. 3 had raised a ground stating that the Id. AO in the penalty notice had not struck off the inappropriate

portion as to whether the assessee had concealed the particulars of income or furnished inaccurate particulars of income.

3. We have heard the rival submissions and perused the materials available on record. 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 31.01.2014 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. Similar view was taken by the Hon'ble Jurisdictional High Court in the case of PCIT vs Sahara India Life Insurance Co. Ltd reported in 432 ITR 84(Del) wherein it was held as under:-

"21. The Respondent had challenged the upholding of the penalty imposed under section 271(1) (c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory [2013] 35 taxmann.com 250/218 Taxman 423/359 ITR 565 and observed that the notice issued by the AO would be bad in law if it did not specify which limb of section 271(1)(c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241, the appeal against which was

dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.

23. The appeals are accordingly dismissed.”

5. In the instant case, on perusal of the penalty notice placed on record dated 31.01.2014, 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 Courts 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 . Accordingly, the Ground No. 3 raised by the assessee is allowed. Since the relief is granted based on Ground No. 3 itself, there is no need to separately adjudicate the other grounds raised by the assessee.

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

Order pronounced in the open court on 10/10/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:10/10/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi