

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "बी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस रिफौर रहमान, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं.1749/दिल्ली/2024 (नि.व. 2007-08)

ITA No.1749/DEL/2024 (A.Y. 2007-08)

Del Monte Foods P. Ltd.,  
Bharti Crescent 1, Nelson Mandela Road,  
Vasant Kunj, Phase II, New Delhi 110070  
PAN: AAACF-8488-N

..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,  
Circle 9(1), CR Building, New Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Anil Bhalla, Chartered Accountant  
प्रतिवादीद्वारा/ Respondent by : Shri Vivek Kumar Upadhyay, Sr. DR  
सुनवाई की तिथि/ Date of hearing : 18/11/2024  
घोषणा की तिथि/ Date of pronouncement: : 18/11/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 27.02.2024, for assessment year 2007-08.

2. Shri Anil Bhalla, appearing on behalf of the assessee submits that during the course of assessment proceedings the Assessing Officer (AO) had made addition on account of Advances written off amounting to Rs.3,20,34,757/- and had initiated

penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') for furnishing inaccurate particulars of income. Notice u/s. 274 r.w.s 271 of the Act dated 31.12.2009 was served on the assessee (copy at page 78 of paper book). The notice was in preprinted performa. The irrelevant clauses in the notice were not struck off; hence, the notice mentioned both limbs of section 271(1)(c) of the Act i.e. "concealed the particulars of income or furnished inaccurate particulars of such income". Non-striking off irrelevant clause in the penalty notice makes the notice ambiguous and invalid. He further pointed that another penalty notice dated 07.06.2019 was served on the assessee, the same is at page 79 of the paper book. In the subsequent notice, there was no mention of any limb of section 271(1)(c) of the Act, for which penalty is being levied. Therefore, the second notice is also ambiguous and invalid.

3. Shri Vivek Kumar Upadhyay, representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. He submitted that in the assessment order itself the AO had specified the definite charge for levy of penalty u/s. 271(1)(c) of the Act and the penalty has been levied on the same charge vide order dated 30.07.2019.

4. Both sides heard, orders of the authorities below examined. The assessee is in appeal against confirming of penalty levied u/s. 271(1)(c) of the Act. The short submission of Authorized Representative (AR) of the assessee is that the notice issued u/s. 274 r.w.s 271 of the Act dated 31.12.2009 at page 78 of the paper book and subsequent notice for levy of penalty u/s. 271(1)(c) of the Act dated 07.06.2019 at page 79 of the paper book are defective, hence, invalid. No penalty can be levied on the basis of invalid notices.

5. We have examined the notice dated 31.12.2009 and notice dated 07.06.201., An examination of the first notice reveal that it is in a preprinted performa, wherein both limbs of section 271(1)(c) of the Act have been mentioned. The Assessing Officer has not struck off irrelevant clauses in the preprinted performa. The omnibus notice is vague. The subsequent notice dated 07.06.2019 is equally ambiguous as the AO has not mentioned any of the limbs of section 271(1)(c) of the Act in the notice for which the penalty is to be levied. Non mentioning of charge for which penalty is to be levied makes the notice as much defective as non striking of irrelevant clauses in the notice. Both make the notice ambiguous and vague. Hence, the proceedings arising from defective notice are vitiated.

6. The Hon'ble Jurisdictional High Court in the case of *PCIT vs. Sahara India Life Insurance Company Ltd.* 108 *taxmann.com* 597 (Delhi) following the decision rendered in the case of *CIT vs. Manjunatha Cotton & Ginning Factory* 359 ITR 565 deleted penalty where the AO failed to clearly specify the limb of section 271(1)(c) of the Act for levy of penalty in the notice.

7. The Full Bench of Hon'ble Bombay High Court in the case of *Mohd. Farhan A Shaikh vs. DCIT* 125 *taxmann.com* 253 has held that where assessment order records satisfaction for imposing penalty on one or other or both grounds mentioned in section 271(1)(c) of the Act, a defect in notice in not striking of irrelevant matter would vitiate penalty proceedings. An omnibus notice suffers from the vice of vagueness.

8. In the result, impugned order is *set aside* and appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 18<sup>th</sup> day of November, 2024.

Sd/-

(S RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 18/11/2024

NV/-

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI