IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' NEW DELHI

BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No. 1638/Del/2010 (A.Y. 2005-06)

Smt.Dayawanti 500, Katra Ishwar Bhawan Khari Baoli New Delhi **PAN: AADPD6869P**	Vs.	DCIT Central Circle-15, Jhandewaaln, New Delhi
Appellant		**Respondent**

ITA No. 1262/Del/2014 (A.Y. 2005-06)

Smt. Dayawanti Devi Through Legal Heir Smt. Sunita Gupta, 500, KatraIshwar Bhawan Khari Baoli New Delhi **PAN: AADPD6869P**	Vs.	DCIT Central Circle-15, Jhandewalan, New Delhi
Appellant		**Respondent**

Assessee by	Shri Anil Jain, CA and Sh. Sarveshwar Singh, Adv
Revenue by	Sh. Rajesh Kumar Dhanesta, Sr. DR
Date of Hearing	28/01/2025
Date of Pronouncement	07/02/2025

ORDER

PER YOGESH KUMAR, U.S. JM:

These two appeals are filed by the Assessee against the orders of the Commissioner of Income Tax (appeals)- II & IV ('Ld. CIT(A)' for short)- New Delhi dated 20/01/2010 and 29/01/2014 on the quantum and penalty respectively for the Assessment Year 2005-06.

2. The Grounds of the above Appeals are as under:-

ITA No. 1638/Del/2010 (A.Y. 2005-06)

1. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal II has failed to appreciate that the assessment order passed by the Ld AO U/S. 153A is bad in law and wrong on facts.

2. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal II has failed to appreciate that there was no valid action U/S 132 of the IT Act consequently the assessment order passed by the Ld AO U/S. 153A is bad in law and wrong on facts.

3. That the assessment framed is against the scheme of the Act whereby the reassessment in such search cases is to be confined to the additions and disallowances consequent to the material found during the course of the search and the material collected/available with the AO and relatable to such evidences and does not give power to the AO to re-appraise the already settled issues and the completed assessment.

4. That the Ld CIT Appeal II has failed to appreciate that impugned assessment order passed by the learned assessing officer is against the principles of natural justice and has been passed without affording reasonable opportunity of being heard.

5. That the Ld CIT Appeal II has failed to appreciate that on the facts and circumstances of the case, the various observations and findings of the learned assessing officer in the impugned assessment order is irrelevant and vitiated in the law.

6. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal II has failed to appreciate that the Ld A.O. has erred in relying on a statement of a third party without any basis enquiry and also without allowing any cross examination.

7. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal II has failed to appreciate that the Ld AO has erred in completing the assessment on the

basis of third party documents, enquiry and statements without any basis, material and evidence and also without its own satisfaction and justification.

8. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal II has failed to appreciate that the Ld AO has erred in not agreeing with the retracted statement without any basis material and evidence and also without proving the same as not correct.

9. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal II has failed to appreciate that the Ld AO has erred in considering the alleged surrender while completing the assessment even without considering the retracted statement and even when no material is there to support the alleged surrender.

10. That on the facts and circumstances of the case and the provision law the Ld. CIT Appeal II has erred in upholding the addition of Rs. 2236679/- on account of trading results without any valid reason, basis and material.

11. That on the facts and circumstances of the case and the provision law the Ld. CIT Appeal II has erred in upholding the estimation of the total sales at Rs. 2,00,00,000/- and Gross Profit at Rs. 30,00,000/-.

12. That the Ld CIT Appeal II has failed to appreciate that on the facts and circumstances of the case, the Ld AO has erred in law in not considering the relevant material on record and has made the addition even when no adverse material is there.

13. That on the facts and circumstances of the case the learned assessing officer has erred in initiating the Penalty proceedings u/s 271 (1) (c) of the Income Tax Act 1961.

14. That on the facts and circumstances of the case the interest charged U/s 234 A, 234 B and 234 C is excessive and has been wrongly and illegally charged.

15.That the Appellant craves the right to amend, append, delete any or all grounds of appeal."

ITA No. 1262/Del/2014 (A.Y. 2005-06)

"1. That on the facts and circumstances of the case and the provision of law the LdCIT(Appeal) has failed to appreciate that the initiation of proceedings u/s 271(1 271(1)(C) is illegal and bad in law.

2. That on the facts and circumstances of the case and the provision of law the Ld CIT(Appeal) has failed to appreciate that the impugned penalty order passed by learned assessing officer u/s 271(1)(C) is illegal, bad in law, time barred, without jurisdiction and wrong on facts.

3. That on the facts and circumstances of the case and the provision of law the Ld.CIT(Appeal) has failed to appreciate that impugned penalty order passed by the learned assessing officer is against the principles of natural justice and has been passed without affording reasonable opportunity of being heard.

4. That on the facts and on the circumstances of the case and the provision of law the Ld CIT Appeal has erred in sustaining the penalty of Rs.7,52,866/-u/s 271(1)(c) of the Act.

5. That the Appellant craves the right to amend, append, delete any or all grounds of appeal."

ITA No. 1638/Del/2010 (A.Y. 2005-06)

3. Brief facts of the case are that, an assessment order came to be passed on 31/12/2007 u/s 153A/143(3) of the Income Tax Act, 1961 ('Act' for short) by assessing the income of the Assessee at Rs. 29,86,479/- as against declared income from business at Rs. 2,21,772/. Aggrieved by the assessment order dated 31/12/2017, the Assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 31/03/2005, upheld the addition of Rs. 22,36,679/- made on

account of trading results. As against the order of the Ld. CIT(A), the Assessee preferred present Appeal on the Grounds mentioned above.

4. The Ld. Counsel for the Assessee submitted that the identical addition has been challenged before the Tribunal in Assessee's own case for Assessment Year 2000-01 to 2004-05 wherein the Co-ordinate Bench of the Tribunal restricted the GP rate at 15% and directed the A.O. to compute the trading addition by adopting the sale @15%, therefore, sought for disposing the Appeal in turns of the order of the Tribunal in Assessee's own case.

5. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities sought for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. The identical issue has been considered by the Co-ordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2000-01 to 2004-05 in Asessee's own case in ITA No. 1634 to 1637/Del/2010, wherein the Co-ordinate Bench of the Tribunal adjudicated the similar issue in following manners:-

> *"25. Ground Nos. 4 to 10 of the assessee's appeal and ground 1(a) of revenue's appeal are inter-related and pertain to addition made on account of the rejection of trading result and adoption of estimated sales and GP rate.*

26. The AO have observed that in the audited account for the year under consideration, the assessee declared sales of Rs.69,28,582/- and Gross Profit of Rs.7,30,961/- yielding gross profit rate of 10.55%. He has noted that the assessee produced only computerized books of account and did not produce sale-bills, purchase bills and vouchers for expenses incurred by it. He has also pointed out that the assessee has not filed confirmation from sundry creditors and debtors other than five creditors. He therefore rejected the books of account and adopted the sale at Rs.1 crore and GP rate at 20%. He thus made an addition of Rs.12,69,039/-. The ldCIT(A) after considering the submission and comments of the AO, upheld the rejection of the books of accounts. In this regard it has been observed by him as under:-

> *"11.1.3.1 But it is a fact that appellant except producing the books of account maintained, sales and purchase bahis and stock register, has not been able to substantiate various debits made in the trading account and P&L Account by producing the relevant bills and vouchers. In the absence of bills and vouchers entries made in books/ bahis cannot be verified and therefore, book results cannot be accepted as such."*

27. The ld CIT(A) has also referred to the statement of Shri Abhay Gupta dated 03.05.2006, wherein the assessee along with all other family members have admitted that they are not disclosing correct gross-profit rate in all group concerns. However in the earlier part of the order, he has observed that so far as the instant year is concerned, the AO has not brought on record any material to point out defect in the books of account except saying that sales and purchase vouchers were not produced. He also observes that on verification it is ascertained for this year that there is no statement either of the appellant or of any other persons to suggest sales are unrecorded. He accordingly has concluded as under:-

> *"I agree with the appellant that there is no justification for rejection of books of accounts and estimating the total at Rs.1 crore for which no basis whatsoever has been given by the AO especially when search as well as survey u/s 133A has taken place in the case of proprietary concern of the appellant. I, therefore, direct the AO not to disturb the sales figures and to adopt the sale at Rs.69,28,582/- only as shown by the appellant."*

28. He thus finally held that declared sales by the assessee has to be adopted, but G P rate is to be adopted at 12% as against rate adopted by AO of 20%. This rate was adopted by the ldCIT(A) on the basis of the GP rate of the assessee for Assessment Year 2006-07. Accordingly, he computed the GP at Rs.7,30,961/-. Thus addition of Rs.,1,00,469/- was upheld and balance of Rs.11,68,570/- was deleted. Thus both the assessee and revenue are in appeal before us.

29. The ld Counsel reiterated the contentions of the assessee before the lower authorities and the revenue relied upon the finding of the AO. We have heard both the parties and perused the material on record. The

trading addition has been made in the instant year by the AO on the ground that book results as declared by the assessee are not verifiable, since sales bills, purchase bills and vouchers for expenses have not been produced by the appellant before him. We find that the assessee even could not produce before the ldCIT(A) the sale bills, purchase bills and vouchers for the expenses incurred by her in the relevant AY. Even before us there was no material led to assail the aforesaid factual position. In such a scenario we have no other alternate but to uphold the rejection of books of accounts as there is no material to substantiate the correctness and completeness of such books of accounts. We may mention here that thought the ld CIT(A) has correctly held at Pg. 11 in para 11.1.3.1 (supra) that in the absence of bills and vouchers, entries made in books cannot be verified, therefore book result cannot be accepted. However quite strangely he has held in Para1 11.1.3 of his order that there is no justification for rejection of books of account by observing that AO has not placed any material on record to point out defects in books. The aforesaid finding is contradictory to his own finding reproduced above in this order at para 26 and therefore erroneous. Now coming to the estimation as noted above, AO had estimated sales at Rs. 1 crore and GP at 20%. Whereas, the ldCIT(A) has accepted the declared sales and estimated GP at 12%. In the instant case, it is crystal clear that each of the figures declared, be it sales or GP are unverifiable without supporting documents. Thus the question which remains is whether the estimation made by the AO is fair and reasonable on the facts on the case. We have already noted above while disposing of ground No. 1 to 3 that as a result of search, shri Ajay Gupta on behalf of assessee has admitted to unaccounted transactions outside regular books of accounts. It is also true that there is no material indicating unaccounted transactions particularly for the instant year unearthed during search, but it cannot be denied that once book results for the year under consideration are unverifiable in the absence of supporting vouchers, bills then the factum of admission u/s 132(4) of the Act made by Shri Abhay Gupta on behalf of the assessee that unaccounted transactions took place for earlier years would be relevant consideration for estimation. In such circumstances the burden was on the assessee to show as to how the estimation as made by the AO was arbitrary or unreasonable. No material has been placed before us to discharge the said burden. The AO has increased the sales from Rs.69 lakh to Rs. 1 crore which on the facts cannot be said to be arbitrary, where assessee has admitted unaccounted transactions albeit for later years. However in respect of GP rate, while perusing the GP rate estimated by the AO for subsequent Assessment Years. We find the following addition has been made by the AO as under:-

Assessment Year	*Assessee*		*A.O*		*addition*
2001-02	*Sales*	*GP%*	*Sales*	*GP*	
2002-03	*8,72,506*	*8.69%*	*2 Crores*	*15%5*	*23,47,630*
2003-04	*67,36,523*	*9.68%*	*2 Crores*	*15%*	*23,47,630*
2004-05	*79,72,200*	*9.47%*	*2 Crores*	*15%*	*22,44,884*
	60,65,498	*10.73%*	*2 Crores*	*15%*	*23,49,012*

30. Since the AO for subsequent Assessment Year's has estimated GP rate of 15%, we do not find any reason as to uphold the GP rate of 20% for this Assessment Year. So we restrict the GP rate at 15% for this Assessment Year and direct the AO to compute the trading addition by adopting the sales at 1 crore and GP rate at 15% for this Assessment Year. We thus allow the ground raised by the revenue and reject the ground raised by the assessee on this behalf."

7. By respectfully following the order of the Co-ordinate Bench of the Tribunal in Assessee's own case (supra), we restrict the GP rate at 15% for the year under consideration and direct the A.O. to compute the trading addition.

8. In the result, Appeal of the Assessee in ITA No. 1638/Del/2010 is partly allowed.

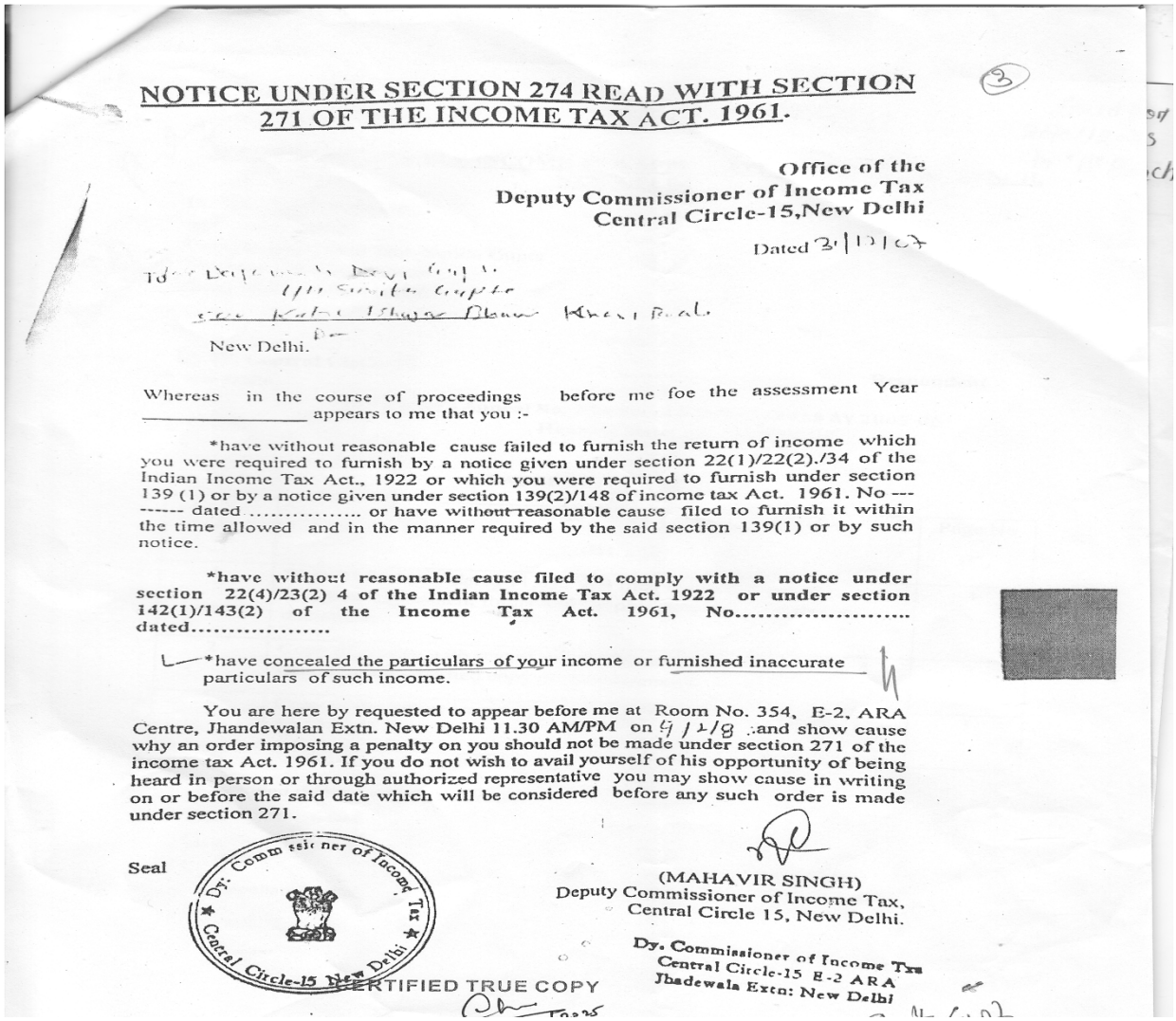
ITA No. 1262/Del/2014 (A.Y. 2005-06)

9. Brief facts of the case are that, the assessment order came to be passed against the Assessee by making addition on account of trading results of Rs. 22,36,679/- and on account of unexplained credit of Rs. 4,52,488/-. A penalty proceedings has been initiated u/s 271(1)(c) of the Act and order of penalty came to be passed on 31/03/2011 by imposing penalty at 100% at Rs. 7,52,866/-. Aggrieved by the penalty order dated 31/03/2011, the Assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) vide order dated 29/01/2014 dismissed the appeal filed by the Assessee. As against the order of Ld.CIT(A) dated 29/01/2014, the Assessee preferred the present appeal on the grounds mentioned above.

10. The Ld. Counsel for the contended that the initiation of thepenalty proceedings and passing of the order of penalty are pursuant to the defective notice u/s 274 read with Section 271 of the Act, wherein the limb or charge for which the notice was issued has not been properly mentioned and the irrelevant limb has not been strike off by the A.O., therefore, the Ld. Counsel for the Assessee submitted that the penalty order passed based on the defective notice cannot be sustained.

11. Per contra, the Ld. DR submitted that the Ld.CIT(A) has adjudicated all the grounds and came to just conclusion by dismissing the appeal, thus, the Ld. DR relying on the orders of the Lower Authorities sought for dismissal of the appeal.

12. We have heard the parties, perused the material on record and gave our thoughtful consideration. The Assessee has produced the notice issued u/s 274 read with Section 271 of the Act, wherein the A.O. has not mentioned the specific charge or limb for which the notice was issued and not even strike off irrelevant limb. The said Notice dated 31/12/2007 is produced by the Assessee is reproduced for ready reference.



NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT. 1961.

(3)

Office of the
Deputy Commissioner of Income Tax
Central Circle-15,New Delhi

Dated 31/10/07

To
The Deputy Commissioner of Income Tax
Central Circle-15
New Delhi.

Whereas in the course of proceedings before me foe the assessment Year _____ appears to me that you :-

*have without reasonable cause failed to furnish the return of income which you were required to furnish by a notice given 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 income tax Act. 1961. No ---------- dated ..... or have without reasonable cause filed to furnish it within the time allowed and in the manner required by the said section 139(1) or by such notice.

***have without reasonable cause filed to comply with a notice under section 22(4)/23(2) 4 of the Indian Income Tax Act. 1922 or under section 142(1)/143(2) of the Income Tax Act. 1961, No..... dated.....**

*have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are here by requested to appear before me at Room No. 354, E-2, ARA Centre, Jhandewalan Extn. New Delhi 11.30 AM/PM on 9/11/8 .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 his 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.

Seal

Dy: Commissioner of Income Tax Central Circle-15 New Delhi

(MAHAVIR SINGH)
Deputy Commissioner of Income Tax,
Central Circle 15, New Delhi.

Dy. Commissioner of Income Tax
Central Circle-15 E-2 ARA
Jhadewala Extn: New Delhi

CERTIFIED TRUE COPY

13. On verifying the above notice issued u/s 274 read with Section 271 of the Act, it is found that the said notice is stereotype one and the AO has not specified any limb or charge for which the notice was issued i.e. either for concealment of particulars of income or furnishing of inaccurate particulars of such income. It can be seen from the said notice, Assessing Officer did not strike off irrelevant limb in the notice specifying the charge for which notice was issued.

14. The identical issue as to whether 'the order of the penalty is sustainable which was initiated by issuing a defective notice without striking off irrelevant limb and without specifying the charge for which notice was issued?' has been decided by the Hon'ble Bombay High Court (full bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT [434 ITR (1)] and the Hon'ble High Court held as under:-

> *"Question No. l: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(l)(c), does a mere defect in the notice--not striking off the irrelevant matter--vitiate the penalty proceedings?*
>
> *181. It does. The primary burden ties on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(l)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings.*
>
> *Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.*

182. More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushaiya does not lay down the correct proposition of law.

Question No.2: Has Kaushaiya failed to discuss the aspect of 'prejudice?

184. Indeed, Kaushaiya did discuss the aspect of prejudice. As we I.T.A.No.1409/Del/2016 have already noted, Kaushaiya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushaiya, "fully knew in detail the exact charge of the Revenue against him". For Kaushaiya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, "the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went onto observe that for sustaining the piea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Kaushalya doses the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done ",

185. No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by

the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under section 274. So asserts Kaushalya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.

186. That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers. Kaushalya's insistence that the previous proceedings supply justification and cure the defect in penalty proceedings has not met our acceptance.

Question No. 3: What is the effect of the Supreme Court's decision in Dilip N. Shroff 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, 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, 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 I.T.A.No.1409/Del/2016 ambiguity. Therefore, Dilip N. Shroff

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(l)(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[74], in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. Dr. Binapani Dei[75]. 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 statue 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 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."

15. As could be seen from the above the Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT [(2021) 434 ITR 1 (Bom)] while dealing with the issue of non-strike off of the irrelevant part in the notice issued u/s.271(l)(c) of the Act, held that assessee must be informed of the grounds of the penalty proceedings only through statutory notice and an omnibus notice suffers from the vice of vagueness.

16. Ratio of this full bench decision of the Hon'ble Bombay High Court (Goa) squarely applies to the facts of the Assessee's case as the notice u/s. 274 r.w.s. 271(l)(c) of the Act was issued without striking off the irrelevant portion of the limb and failed to intimate the assessee the relevant limb and charge for which the notices were issued.

17. Thus, by following the above ratio, we are of the opinion that, the penalty order passed u/s 271(1)(c) of the Act by the Assessing Officer and the order of the CIT(A) in confirming the penalty order are erroneous. Accordingly, the penalty order dated 31/03/2011 passed by the A.O for Assessment Year 2005-06 is hereby quashed.

18. In the result, Appeal filed by the Assessee is allowed.

Order pronounced in the open court on 07th February, 2025

Sd/-	**Sd/-**
(AVDHESH KUMAR MISHRA)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:- 07.02.2025
R.N, Sr.P.S*
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI