

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.126/RPR/2025
निर्धारण वर्ष / Assessment Year : 2015-16

Nilima Agrawal
E-5, Sector-1, Devendra Nagar,
Raipur (C.G.)-492 001
PAN: AFEPA5240B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer
Ward-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri S.L Anuragi, CIT-DR




सुनवाई की तारीख / Date of Hearing : 23.04.2025

घोषणा की तारीख / Date of Pronouncement : 24.04.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of Ld.CIT(Appeals)/NFAC, Delhi dated 08.01.2025 for the assessment year 2015-16 as per grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee even without going into the merits of the case submitted that the notice of penalty issued u/s. 274 r.w.s. 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') is ambiguous so far as the said notice does not specify the accurate limb in which the penalty is levied on the assessee. The said notice refers to both the limbs i.e. concealed the particulars of income or "furnished inaccurate particulars of such income. The Ld. Counsel therefore submitted that since the inappropriate limb in the notice has not been struck off, therefore, there is no satisfaction in the mind of the A.O while issuing the notice in which he wants to proceed against the assessee in the penalty proceedings. For the sake of completeness, the said notice u/s. 274 r.w.s. 271(1)(c) of the Act is extracted and made part of this order, as follows:

 <p style="text-align: center;">GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 3(3) RAIPUR</p>			
To, NILIMA AGRAWAL E-5, Sector-1 Devendra Nagar RAIPUR 492001, Chhattisgarh India		1852	
PAN: AFEPA5240B	Assessment Year: 2015-16	Date: 14/12/2017	Notice No. : ITBA/PNL/S/271(1)(c)/2017- 18/1007967759(1)
Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961			
Sir/ Madam,			
Whereas in the course of proceedings before me for the Assessment Year 2015-16, it appears to me that you have concealed the particulars of income or furnished inaccurate particulars of such income.			
You are hereby requested to appear before me either personally or through a duly authorised representative at 11:00 AM on 29/12/2017 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961.			
If you do not wish to avail yourself of this opportunity of being heard in person or through authorised 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) of the Income Tax Act, 1961.			
		 AMRISH KUMAR WARD 3(3) RAIPUR	

3. Per contra, the Ld. CIT-DR principally supported the findings of the revenue authorities, but at the same time conceded that the notice u/s. 274 r.w.s. 271(1)(c) of the Act is vague and ambiguous and has not spelt out the appropriate limb, in which the penalty has to be levied on the assessee.

4. In this regard, it is observed that the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Gragerious Projects (P) Ltd. (2024) 169 taxmann.com 291 (Del.)** had upheld the findings of the Tribunal on two counts, viz. **(i)** it was held that where the charges are either concealment of particulars of income or furnishing of inaccurate particulars thereof, the revenue must specify as to which one of two limb is sought to be pressed into service and therefore, the revenue is not permitted to club both the charges; and **(ii)** it was further held that in absence of specific charge for initiation of penalty proceedings, the Tribunal rightly held that the levy of penalty u/s. 271(1)(c) of the Act in the case of the assessee was not valid.

5. That on similar facts and circumstances regarding ambiguity in the notice issued for penalty u/s.271(1)(c) of the Act, the **Hon'ble High Court of Bombay** in the case of **Pr. CIT Vs. Times Global Broadcasting Ltd. (2025) 172 taxmann.com 766 (Bom.)** has observed as follows:

"5. We have perused the impugned order and find that, in this case, the notice issued to the Assessee did not clarify whether the penalty was proposed to be imposed on the grounds of concealment or furnishing inaccurate particulars. The necessary box containing the two options was not ticked. Thus, the Assessee had no clear notice about the case it was required to meet.

6. Precisely, in the above context, the Full Bench has made the following observations in paragraph Nos.180 to 183 of its decision. These observations read as follows: -

"....180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may

not contain reasons for the penalty proceedings. The other course of action is the prevention of defect in the notice—and that prevention takes just a tick mark. Prudence demands prevention is better than cure.

Answers:

Question No.1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiate the penalty proceedings?

181. It does. The primary burden lies 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(1)(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 Kaushalya does not lay down the correct proposition of law.....”

7. Thus, we are satisfied that the question now proposed, stand answered against the Revenue, inter alia, by the Full Bench of this Court in the case of Mohd. Farhan (supra).

8. For the above reasons, we decline to admit this appeal on the questions proposed.”

6. Further the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Blackrock Securities (P) Ltd. (2023) 157 taxmann.com 564 (Del.)** has held and observed as follows:

"7. We may, for convenience, quote from one of the judgments i.e., Unitech Reliable Projects Pvt. Ltd., which in our opinion, provides the rationale as to why it is necessary to indicate to the assessee the specific limb of Section 271(1)(c) of the Act under which penalty proceedings are triggered against him:

"15. According to the Tribunal, the notice dated 14.03.2015 issued under Section 274 read with section 271(1)(c) of the Act did not specify, as to the limb under which penalty was sought to be imposed. In other words, the notice which was served on the respondent/assessee did not indicate, as to whether penalty was being levied on account of concealment of income, or for the reason that it had furnished inaccurate particulars. The Tribunal, based on the order of the Supreme Court in CIT v SSA's Emerald Meadows [2016] 73 taxmann.com 248/242 Taxman 180, observed that the penalty proceedings would have to quashed.

16. For the sake of convenience, the relevant part of the impugned order passed by the Tribunal is extracted as under:

"7.2 The Hon'ble Apex Court in case of M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC) dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the Assessee. Operative part of the judgment in case of M/s. SSA's Emerald Meadows (supra) decided by Hon'ble High Court of Karnataka is reproduced below:-

"2. This appeal has been filed raising the following substantial questions of law:

(1) Whether, omission if [sic...of] assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in. holding that the penalty

notice under section 274 r.w.s. 271(1)(c) is bad in law and. invalid in spite the amendment of section 271(1B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?

3. The Tribunal has allowed the appeal filed by the Assessee holding the notice issued by the Assessing Officer under section 274 read with section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act) to be bad in law as it did not specify which limb of section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the Assessee, has relied upon the decision of the Division Bench of this Court rendered In the case of Commissioner or Income-tax v. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises, in this appeal for determination by this Court, the appeal is accordingly dismissed."

[Emphasis is ours]

17. The Supreme Court in the aforesaid case, in fact, confirmed the view of the Karnataka High Court in said matter, which in turn had relied upon the judgment of its own Court in Manjunatha Cotton & Ginning Factory, (2013) 359 ITR 565.

18. Furthermore, the Tribunal also noted the coordinate bench judgement of this Court in PCIT v. Sahara India Life Insurance Company Ltd. [2021] 432 ITR 84 (Del.).

19. We may note, that even the assessment order dated 14.03.2015, whereby penalty proceedings were triggered, did not indicate as to which limb of section 271(1)(c) was being triggered qua the petitioner. This is evident from the following observation made by the AO:

“penalty proceedings u/s. 271(1)(c) is being initiated separately for concealment of income & for furnishing inaccurate particulars of income”.

20. We may note, that another coordinate bench of this Court, of which one of us (i.e. Rajib Shakhdar, J) was a party has reached the same conclusion in PCIT V. Minu Bakshi 222(7) TMI 1370-Delhi.

21. Penalty proceedings entail civil consequences for the assessee. The AO is required to apply his mind to the material particulars, and indicate clearly, as to what is being put against the respondent/assessee when triggering the penalty proceedings.

22. In case the AO concludes, that a case is made out under section 271(1)(c) of the Act, he needs to indicate, clearly as to which limb of the said provision is attracted. The reason we say so is, that apart from anything else, the pecuniary burden may vary, depending on the infraction(s) committed by the respondent/assessee. In a given case where concealment has taken place, a heavier burden may be imposed, than in a situation where an assessee is involved in furnishing inaccurate particulars.

23. Therefore, it is necessary for the AO to indicate, broadly, as to the provision/limb under which penalty proceedings are triggered against the assessee.

24. Clearly, this has not happened in the instant case.

25. As a matter of fact, even in the assessment order, whereby proceedings were triggered, there is no indication whatsoever, as to which limb of section 271(1)(c) of the Act was triggered.

26. Thus, in the given circumstances, we are not inclined to interfere with the impugned order. According to us, the issue is well-traversed, and therefore, this appeal need not be entertained. No substantial question of law arises for our consideration."

[Emphasis is ours]

8. As adverted to in the Unitech Reliable Projects (P.) Ltd. case (supra), the imposition of a penalty entails several consequences. The AO is required to apply his mind to the material and indicate, clearly, to the assessee what is being put against him. In other words, which limb of section 271(1)(c) of the Act is attracted in the given facts and circumstances of the case.

9. It is our view, that this clarity would be necessary as the pecuniary burden that the assessee may be mulct with could vary, depending on the infraction committed by him.

10. Thus, in the given case, where concealment has taken place, a heavier burden may be imposed, as compared to till situation where the assessee furnishes inaccurate particulars. We may also make it clear that there may be circumstance where both limbs are attracted. If that is the situation, the notice should allude to this aspect.

11. Given the aforesaid circumstances, we are of the view that no substantial question of law arises for our consideration.

12. Accordingly, the appeal is closed.”

7. In our considered view, the legal parameters that has been set forth by the judicial pronouncements as afore-stated is that through the penalty proceedings initiated against the assessee, he is put to pecuniary burden, therefore, it is essential from the aspect of natural justice that he should be made aware of the charges, for which, penalty is levied against him so that he can be ready with his defense. The bedrock of any judicial system is based on ultimate epitome of natural justice. This cannot be eroded by any process of law until and unless fraud is detected or malafide conduct is detected on the part of the assessee. In the present case before us, the ambiguity that is existing in the notice issued u/s.274 r.w.s. 271(1) (c) of the Act hampers the rights of the assessee from the perspective of natural justice. There has been no evidence placed on record by the revenue to suggest any malafide conduct on the part of the assessee. Therefore, at the threshold the parameters of the penalty notice has to be decided and as

per the principles laid down by the Superior Forum as enshrined hereinabove, we do concur with the same findings arrived at that before issuance of penalty notice, the A.O is required to apply his mind to the material on record and specify clearly to the assessee what is being put against him. In other words, which limb of Section 271(1)(c) of the Act is attracted in the given facts and circumstances of the case must be specified in the notice which is sent to the assessee. Since in the present case notice being ambiguous where both the limbs are clubbed together, we therefore hold that such notice itself is void ab initio, therefore, all the subsequent proceedings becomes a nullity in the eyes of law. Accordingly, the order of the Ld. CIT(Appeals)/NFAC itself becomes non-est.

8. Therefore, even without going in the merits of the case on this legal issue itself and as per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed.

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

Order pronounced in the open court on 24th April, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 24th April, 2025.

***SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.