IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

AND
SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

I.T.A. No.865/Mum/2025
Assessment Year: 2009-10

Pratap Nagnaji Rajgor Room No. 94, 2nd Floor, Badrika Ashram Bldg., 1st Khetwadi Lane, Mumbai 400004. **PAN: AAAPR7926C**	Vs.	**ITO 19(3)(1) Mumbai** Matrumandir, Tardeo Mumbai 40007.
(Appellant)		**(Respondent)**

Appellant by	Shri. Prakash Pandit
Respondent by	Shri. Mukesh Thakwani SR. D.R.

Date of Hearing	24.03.2025
Date of Pronouncement	28.03.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present penalty appeal filed by the assessee arises out of order dated 18/12/2024 passed by NFAC, Delhi for Assessment Year 2009-10 on following grounds of appeal:

1. *"In the facts and circumstances of the case and in law the learned CIT(A) erred in confirming penalty of Rs. 6,17,790/- under section 271(1)(c) of the Act levied by the AO.*

2. *Reasons given by the CIT(A) for confirming penalty of Rs. 6,17,790/- under section 271(1)(c) of the Act levied by the AO are wrong, insufficient, and contrary to the facts and evidence on record.*

3. *he assessee craves leave to add, amend, alter, modify or omit any of the aforesaid Grounds of Appeal as occasion may arise of demand."*

Brief facts of the case are as under:

2.The assessee is an individual carrying on business under proprietorship Firm M/s. Popular Metal at 2nd floor, R. No 94, Badrika Ashram Building, 1st Khetwadi lane, Mumbai 400004. The assessee is a trader in ferrous and nonferrous metal. For A. Y. 2009-10 the assessee filed his return of income of 04/07/2009 disclosing total income of Rs. 2,70,934/-. The said return was processed under section 143(1) of the Act.

2.1. An information received from DGIT Investigation Mumbai, by stating that assessees have taken bogus hawala/accommodation entries from certain parties to inflate their purchases and to reduce taxable profit that surfaced out as per the investigation made by Sales Tax Department Government Of Maharashtra. The said reasons also provided names of the persons who issued alleged accommodation bills.

The Ld. AO observed that, the assessee received accommodation bills to the tune of Rs. 1,59,94,552/- during the year under cancerisation from eight parties. (Subsequently, the assessment was reopened by issuing of notice u/s. 148 r.w.s. 147 of the Act after recording reasons.)

2.2. During the reassessment proceedings, the Ld. AO called upon assessee to provide details of sales and purchases with full details of suppliers and purchasers along with their PAN, description of the goods sold and purchased, quantity, rate and amount, including details of purchases from said eight parties. The assessee provided said details from time to time which include all purchase bills, copy of ledger accounts, copy of bank statement showing that the payments of purchases and sales are by crossed

cheques, item wise stock register showing movement of goods with reference to purchases and sales. The assessee also filed list of creditors and debtors.

2.3. The Ld. AO however, rejected assessee's explanation on the ground that, Sales Tax Department conducted independent enquiry in respect of each of the hawala parties and has conclusively proved that the said parties were engaged in providing accommodation bills. On the basis of the said information from Sales Tax Department, the Ld. A.O. formed his opinion that the said bills produced by the assessee were to inflate the its purchases.

2.4 The Ld. AO thus, placing reliance on various decision observed vide order sheet noting dated 09/03/2015 that the assessee voluntarily agreed for 12.5% of disallowance of non-genuine purchase of Rs.1,59,94,552/-, amounting to Rs.19,99,319/-. The Ld. AO noted that, the assesse agreed to pay the taxes before 31/03/2015. The Ld. AO also initiated proceedings u/s. 271(1)(c) of the Act for filing inaccurate particulars of income in respect of the above.

2.5. Assesse filed appeal before Ld. CIT(A) against this the quantum who confirmed the addition made by the Ld. AO. Against the assesse preferred by this *Tribunal* which also stood confirmed and the assesse finally filed appeal before *Hon'ble Bombay High Court* against the quantum addition.

3. Be that as it may the Ld. AO issued notice u/s. 274 r.w.s 271(1)(c) of the Act on 09/03/2015 and the penalty proceedings were initiated after the quantum addition was confirmed by this *Tribunal*. The Ld. AO issued show cause notice dated 15/02/2018.

Subsequently, vide order dated 23/03/2018 the Ld. AO and levied penalty by rejected explanation provided by assesse. The Ld. AO invoking Explanation 1 to section 271(1)(c) of the Act.

Aggrieved by the penalty order, the assessee preferred appeal before Ld. CIT(A).

3.1 The Ld. CIT(A) confirmed the levy of penalty by holding that, the quantum addition has been confirmed by this *Tribunal*. The Ld. CIT(A) also relied on various decisions of other *Tribunal* in order to support the view.

Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this *Tribunal*.

4.1. The main contention of the Ld. AR is that, the penalty was initiated by the Ld. AO for furnishing of inaccurate particulars of income u/s. 271(1)(c) of the Act and the levy was for concealment. He also submitted that, the notice issued u/s. 274 read with section 271(1)(c) of the Act dated 09/03/2015 did not specify the charge for which the penalty proceeding was initiated. He thus, submitted that the penalty order so passed is bad in law.

4.2. The Ld. AR placed reliance on the decision of the *Hon'ble Bombay High Court* in case of *Nayan Builders and Developers reported in (2014) 368 ITR 722* wherein, *Hon'ble Court* held that, merely, because the quantum addition was confirmed and the question of law was admitted by *Hon'ble High Court*, penalty cannot be levied u/s. 271(1)(c) of the Act.

4.3. The Ld. AR placed reliance on a Full Court Bench decision of *Hon'ble Bombay High Court at Goa* in case of *Mohd Farhan A. Shaikh V. DOT*, Belgaum reported in (*2021) 434 ITR 1***.** It is submitted that, the ratio of the decisions squarely applies to the

facts of the present case and – the contention, that notice u/s. 274 r.w.s 271(1)(c) of the Act was issued mechanically, in a printed format, without striking of irrelevant portion in bad in law.

4.4. On the contrary, the Ld. DR submitted that the penalty order, though was initiated for filing of inaccurate particulars, the Ld. AO observed that, it is due to concealment that, assessee intentionally furnished inaccurate particulars. He thus, supported the notice issued u/s. 274 read with Section 271(1)(c) of the Act, and the penalty levied for concealment. The Ld. DR also emphasised that, strike off not being done, is to be treated as mere technical defect and will not invalidate penalty proceedings.

We have perused the submissions advanced by both sides the light of the record placed before us.

5. It is noted that, the specific limb for which penalty was initiated in the assessment order is for filing of inaccurate particulars. There is no notice issued by the Ld. AO calling upon the assessee for explanation under both the limbs. It is also noted that, the levy of penalty in the order passed is for concealment, which clearly shows that the both the limb was never intended to be initiated against assesse.

5.1. The observations of *Hon'ble Bombay High Court* on identical issue in the decision relied by Ld. AR are as under:

> *"**Question No. 1:** If assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), does a mere defect in notice-not striking off irrelevant matter - vitiate 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. 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, the first question is answered to the effect that Pr. CIT v. Goa Dourado Promotions (P.) Ltd. [Tax Appeal No.18 of 2019, dated 26-11-2019] and other cases have adopted an approach more in consonance with the statutory scheme. That means it must be held that CIT v. Smt. Kaushalya [1994] 75 Taxman 549/[1995] 216 ITR 660 (Bom.) does not lay down the correct proposition of law."*

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

184. *Indeed, Smt. Kaushalya case (supra) did discuss the aspect of prejudice. As we have already noted, Kaushalya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushalya, "fully knew in detail the exact charge of the Revenue against him". For Kaushalya, 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 plea 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". Smt. Kaushalya case (supra) closes 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 Smt. Kaushalya case (supra). 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 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 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 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."

5.2. We refer to the observation of *Hon'ble Bombay High Court* in para 185,186,189,190,191 reproduce hear in above. Further as per Article 142 of the Constitution the decision reiterated by constitution bench shall be binding for all the purpose. Therefore, respectfully following the aforesaid view we are of the opinion that the notice u/s. 274 issued vaguely without identifying the specific limb is bad in law. We accordingly quash the penalty proceeding initiated against assesse to be void ab-initio.

Accordingly, the grounds raised by the assessee is stands allowed.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 28/03/2025

Sd/-	**Sd/-**
(OMKARESHWAR CHIDARA)	**(BEENA PILLAI)**
Accountant Member	**Judicial Member**

Mumbai:
Dated: 28/03/2025

Divya R. Nandgaonkar,
Stenographer

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai