

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &  
MS PADMAVATHY S, AM**

**I.T.A. No. 184/Mum/2025  
(Assessment Year: 2009-10)**

<b>Nayankumar Jayantilal Balu,</b> Room No. 1, 1 <sup>st</sup> Floor, 72, Bhavnagiri Building, Nanubhai Desai Road, Corner of Ardeshidad Street, Maharashtra-400004. <b>PAN: AUDPB2495B</b>	Vs.	<b>National Faceless Appeal Centre,</b> 245A, North Block, New Delhi-110001
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Rushabh Mehta, AR

**Revenue / Respondent by** : Shri Leyaqaat Ali Aafaqui- Sr. DR

**Date of Hearing** : 22.04.2025

**Date of Pronouncement** : 28.04.2025

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] dated 10.12.2024 for AY 2009-10. The assessee raised the following grounds of appeal:

*“1. (a) The penalty order passed u/s. 271(1)(c) of the Act is void ab initio, without jurisdiction, invalid and bad in law.*

*(b) The Id. CIT (A) erred in law in sustaining the penalty proceedings initiated by the Id. Assessing Officer u/s 271(1)(c) without specifying any particular charge thereby resulting into infirmity at the stage of initiation itself, rendering the penalty order bad in law.*

*2. (a) The Id. CIT (A) erred in facts and law by sustaining the penalty of Rs. 10,58,440/-u/s. 271(1)(c) of the Act imposed by the Id. Assessing Officer without appreciating that the appellant has filed complete and accurate particulars of income.*

*(b) The Id. CIT (A) erred in facts and law in imposing the penalty of Rs. 10,58,440/-despite that fact that the additions were sustained on estimation based on surmises and conjectures and without any clinching evidence brought on record against the appellant.*

*3. Without prejudice to ground no. 1(a), 1(b), 2(a) and 2(b); the Id. CIT (A) erred in not even appreciating the fact that the Hon'ble High Court have admitted appellant's appeal vide its order dated 23.09.2022 which clearly shows that the issue involved is debatable, thereby failing to follow the decision of Hon'ble Jurisdictional High Court in the case of **Commissioner of Income-tax v. Nayan Builders & Developers [2015] 56 taxmann.com 335 (Bombay HC).**"*

2. The assessee is an individual engaged in the business of Ferrous & Non-Ferrous Metal under the name and style of proprietorship concern M/s Vishal Metal Corporation. The assessee filed the return of income for AY 2009-10 on 20.03.2010 declaring a total income of Rs. 7,99,650/-. The AO received information from Investigation Wing that the assessee is a beneficiary in obtaining accommodation entry on account of bogus purchases from the alleged hawala party M/s Navratan Impex. Accordingly the AO reopened the assessment of the assessee. After considering the details filed by the assessee, the AO completed the assessment under section 143(3) r.w.s 147 by making an addition at Rs. 34,25,377/- being 12.5% of the alleged non-genuine purchases of Rs. 2,74,03,016/-. The AO in the assessment order had mentioned that penalty proceedings under section 274 r.w.s 271(1)(c) are separately initiated for furnishing inaccurate particulars of income chargeable to tax. The AO passed an order under section 271(1)(c) dated 31.03.2018 levying a penalty

of Rs. 10,58,440/-. On further appeal the CIT(A) confirmed the penalty. The assessee is in appeal before us against the order of the CIT(A) confirming the penalty levied by the AO.

3. At the outset, the Id. AR submitted that the notice under section 271(1)(c) of the Act does not specify whether the penalty proceedings are initiated for concealing the particulars of income or for furnishing of inaccurate particulars of such income. In other words the Id. AR submitted that the AO has not struck off the particular of charge in assessee's case while issuing the notice under section 271(1)(c) of the Act and in this regard drew our attention to the notice issued as extracted below:

आयकर अधिनियम, 1961 की धारा 271 के साथ पढी गई धारा 274 के अधीन सूचना  
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF  
THE INCOME TAX ACT, 1961  
Penalty/66/Pg/2014-15

आई. टी. एन. एन.-29  
I.T.N.S.-29

सेवा में /  
To,  
SHRI NAYAN JAYANTILAL BALU  
72 R, NANUBHAI DESAI ROAD  
MUMBAI-400004.

आयकर कार्यालय/Office of the  
Income-Tax Officer-19(2)(4)  
Room No. -217,  
B.K.C. Patil Municipal  
Mumbai-400007.  
तारीख/Dated :05.03.2015  
PAN : ADUPB2495B

**NOTICE U/S 271(1)(c)**

चूंकि कर निर्धारण वर्ष ..... के संबंध में मेरे यहां होने वाली कार्रवाई के दौरान मुझे प्रतीत होता है कि आपने :-  
Whereas in the course of proceedings before me for the assessment Year 2009-10 it appears to me that You:-

\* बिना उचित कारण के यह आय विवरणी नहीं दी है जो आपको भारतीय आयकर अधिनियम, 1922 की धारा 22(1), 22(2)/ 34 के अधीन दी गई सूचना के अनुसार देनी ठीक या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961 की धारा 139(2)/148 के अधीन दी गई सूचना सं. .... ता. .... अनुसार दाखिल करने की ठीक अथवा उचित कारण के बिना आपने दिए गए समय के अन्दर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अपेक्षित नीति से विवरणी नहीं दी है।  
\* Have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 139 (2)/148 of the Income Tax Act, 1961 No. .... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

\* बिना उचित कारण के आपने भारतीय आयकर अधिनियम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना सं. .... ता. .... का अनुपालन नहीं किया है।  
\* Have without reasonable cause failed to comply with a notice under Section 22(4) / 23(2) of the Indian Income-tax Act, 1922 or under Section 142(1) / 143(2) of the Income-Tax Act, 1961, No ..... dated .....

\* अपनी आय के ब्यौरे छिपा लिए हैं या ..... इस प्रकार की आय के ब्यौरे गलत दिए हैं।  
\* have Concealed the particulars of your income or ..... Furnished inaccurate particulars of such income.

आपको एतद्वारा सूचित किया जाता है कि ता. .... 200 ..... को बजे ..... अ.म./प.म. में आप मेरे कार्यालय में उपस्थित हों और कारण बताएं के आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर दण्ड लगाने का आदेश क्यों न दिया जाए। यदि आप स्वयं उपस्थित होकर या पधिकृत पतिनिधि द्वारा सुनवाई के लिए दिए गए अवसर का लाभ नहीं उठाना चाहते तो उक्त तारीख को या उससे पूर्व लिखकर इसका कारण बताएं, जिस पर धारा 271 के अधीन कोई ऐसा आदेश देने से पूर्व विचार किया जाएगा।

You are hereby requested to appear before me within 7 days from receipt of this notice 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 this 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(1)(c).

(मोहर)  
Seal

निर्धारण अधिकारी  
Assessing Officer

विनायक राय  
आयकर अधिकारी- 19 (2) (4), मुंबई  
VINAYAK RAY  
Income Tax Officer - 19 (2) (4), Mumbai

\* जो शब्द या पंरे आवश्यकता अनुसार उद्धृत काट दीजिए  
\* Delete in appropriate words and Paragraphs.

4. The ld. AR further submitted that the AO in the assessment order has mentioned that the penalty proceedings are to be separately initiated for furnishing inaccurate particulars whereas while passing the penalty order the AO has mentioned that the assessee has filed inaccurate particulars of its income by concealing particulars of income. Therefore, the ld. AR argued that the AO has not clearly mentioned the charge against the assessee for which penalty is levied. The ld. AR also made the alternate argument that the quantum appeal is admitted by the Hon'ble Jurisdictional High Court and therefore, when the question of law is pending before the Hon'ble High Court penalty cannot be levied. The ld. AR made one more alternate plea that when the addition is made on estimated basis, no penalty can be levied. The ld. AR also brought to our attention that the assessee during the course of assessment proceedings has produced all the relevant details with respect to the purchases and therefore there is no concealment of income on the part of the assessee. Accordingly, the ld. AR argued that the penalty levied cannot be sustained.

5. The ld. DR on the other hand submitted that the AO has clearly recorded in the penalty order that the proceedings are initiated for the reason of inaccurate particulars of income by the assessee and therefore, there is no ambiguity with regard to the charge. The ld. DR further submitted that the AO has issued notice under section 133(6) of the Act to the parties which is not been responded and therefore, the assessee has not discharged the onus of proving the genuineness of the purchases. The ld. DR also submitted that the AO has rejected the books of accounts and when the reassessment proceeding are initiated based on the sales tax investigation the charge against the assessee of filing inaccurate particulars of

income is evidenced. Accordingly, the ld. DR vehemently supported the orders of the lower authorities.

6. We heard the parties and perused the material on record. From the perusal of the penalty order as extracted in the earlier part of this order, we notice that the AO has not struck off the charge i.e. whether the assessee has concealed the particulars of income or furnished inaccurate particulars. In this regard we notice that the Hon'ble Bombay High Court in the case of CIT vs. Samson Perinchery [2017] 88 taxmann.com 413 (Bom.) where it has been held that

*"2. All these appeals raises an identical question of law save the difference in the quantum, which read as under:-*

*"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the IT Act, 1961?"*

*3. The impugned order of the Tribunal deleted the penalty imposed upon the Respondent-Assessee. This by holding that the initiation of penalty under Section 271 (1)(c) of the Act by Assessing Officer was for furnishing inaccurate particulars of income while the order imposing penalty is for concealment of income. The impugned order holds that the concealment of income and furnishing inaccurate particulars of income carry different connotations. Therefore, the Assessing Officer should be clear as to which of the two limbs under which penalty is imposable, has been contravened or indicate that both have been contravened while initiating penalty proceedings. It cannot be that the initiation would be only on one limb Le, for furnishing inaccurate particulars of income while imposition of penalty on the other limb Le concealment of income. Further, the Tribunal also noted that notice issued under Section 274 of the Act is in a standard proforma, without having struck out irrelevant clauses therein. This indicates non-application of mind on the part of the Assessing Officer while issuing the penalty notice.*

*4. The impugned order relied upon the following extract of Karnataka High Court's decision in CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250 to delete the penalty:-*

*"The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it as case of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai[2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering reported in 122 ITR 306 and the Delhi High Court in the case of Virgo Marketing P. Ltd., reported in 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind."*

*5. The grievance of the Revenue before us is that there is no difference between furnishing of inaccurate particulars of income and concealment of income. Thus, distinction drawn by the impugned order is between Tweedledum and Tweedledee. In the above view, the deletion of the penalty, is unjustified.*

*6. The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in I Ashok Pai v. CIT[2007] 292 ITR 11/161 Taxman 340 [relied upon in Manjunath Cotton & Ginning Factory (supra)] wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.*

*7. Therefore, the issue herein stands concluded in favour of the Respondent-Assessee by the decision of the Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (supra). Nothing has been shown to us in the present facts which would warrant our taking a view different from the*

*Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra).*

*8. In view of the above, the question as framed do not give rise to any substantial question of law. Thus, not entertained.”*

7. A similar view has been held in the case of Md. Farhan A. Shaikh vs. DCIT [2021] 125 taxmann.com 263 (Bom.) and in a recent decision in the case of PCIT vs Times Global Broadcasting Ltd. [2025] 172 taxmann.com 786 (Bombay). Therefore respectfully following the decisions of Jurisdictional High Court we hold that the penalty order under section 271(1)(c) is liable to be quashed for the reason that the penalty notice issued under section 271(1)(c) to assessee did not clarify whether penalty was proposed to be imposed on grounds of concealment or furnishing inaccurate particulars.

8. In view of our decision above, the other legal contentions and the contentions on merits raised by the assessee have become academic not warranting any separate adjudication.

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

*Order pronounced in the open court on 28-04-2025.*

**Sd/-**  
**(SAKTIJIT DEY)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**