

Ilaben Kishorbhai Ghadia, Millenium Icon, Flat No.1701, Plot No.50/51,D Mart, Sector- 15, Kharghar, Navi Mumbai- 410 210 PAN: AHQPG3648F	vs	Deputy Commissioner of Income- tax, Central Circle-1(1), Mumbai Room No.903, 9 th Floor, Pratishta Bhavan, Old CGO Annexe, M.K. Road, Mumbai-400 020
APPLICANT		RESPONDENT

Assessee by : Shri Satyaprakash Singh

Respondent by : Shri Ritesh Misra, CIT DR

Date of hearing : 10/07/2025

Date of pronouncement : 16/07/2025

ORDER

Per Anikesh Banerjee (JM):

These are four appeals filed by difference assesseees against the independent orders of the Learned Commissioner of Income-tax-47, Mumbai [in short, the “Ld. CIT(A)”] passed under section 250 of the Income-tax Act, 1961 (in short, ‘the Act’) for Assessment years 2014-15 and 2015-16, dated 30/09/2024 for AY 2014-15 and 27/09/2024 for AY 2015-16. The impugned orders emanated from the penalty orders under section 271(1)(c) of the Act by the Ld. Deputy Commissioner of Income-tax, Central Circle-1(1), Mumbai (in short, the “Ld. AO”) date of orders for AY 2014-15 dated 03/08/2023 and for AY 2015-16 dated 06/12/2023.

2. All the appeals carry identical facts and common issue. Therefore, for the sake of convenience, they were clubbed together, heard together, and are being disposed of by this common order. **ITA No.6060/Mum/2024** is taken as the lead case.

4.3. *The Hon'ble CIT(A) erred in not adjudicating the Ground No. 4 raised by the Appellant as reflected in Annexure B to Form 35, which is a violation of principle of natural justice.*

4.4. *Further, on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the order passed by the Ld. AO without considering the fact that the Appellant had filed a WRIT petition before the Hon'ble Bombay High Court.*

4.5. *Therefore, the Appellant prays that the order u/s 250 of the Act is bad in law and the Ld. AO be directed to delete the penalty levied u/s 271(1)(c) of the Act.*

5. Without prejudice to Grounds 1 to 3, Ground 4:

5.1. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding that the unsecured loans have remained unexplained without appreciating the fact that the Appellant had discharged his primary responsibility of explaining the nature and source of credits and had submitted detailed explanations with supporting documentary evidences to prove the genuineness and creditworthiness of the lenders.*

5.2. *He further failed to appreciate that the Appellant had submitted the correct details. However the addition has been confirmed under a deeming provision.*

5.3. *Therefore, the Appellant prays that the penalty levied u/s 271(1)(c) of the Act is bad in law and ought to be deleted.*

6. Ground 5:

The Appellant craves leave to add, amend or alter any ground/s of appeal on or before the final hearing."

2. Further to that, the assessee sought to raise the following additional ground of appeal, which is identical to all the appeals under consideration:

the Ld.AO, after seeking explanations from the assessee passed order under section 271(1)(c) of the Act, levying penalty of Rs.6,94,323/- being 100% of the tax sought to be evaded. The aggrieved assessee filed appeal before the Ld. CIT(A). The Ld.CIT(A) dismissed the appeal filed by the assessee. Further aggrieved, the assessee filed appeal before the Tribunal.

5. The Ld.AR invited our attention to the notice dated 27/12/2016 issued by the DCIT, Central Circle 1(1), Mumbai that the notice suffers from defect; there is no mention about the limb under which the penalty was proposed to be levied, whether for concealment of income or for furnishing inaccurate particulars of income. So accordingly, the said notice is invalid. The copy of the alleged notice is reproduced as below:-

Court (Panaji Bench) in the case of Mohammed Farhan A Shaikh vs DCIT (2021)**434 ITR 1 (Bom [FB]).** The relevant paragraphs are reproduced as below:-

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—vitiating 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.

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 on to 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

**ITA 6061/Mum/2024 (A.Y. 2015-16) &
ITAs 6062 & 6063/Mum/2024**

9. The facts and circumstances in these three appeals are identical to the facts and circumstances narrated above, therefore, the decision arrived at above, shall apply mutantis mutandis to these appeals also.

10. Since the appeals have been decided in favour of the assessee on legal grounds, the examination of the merits of the case is rendered academic in nature and does not require adjudication.

11. In the result, all the appeals filed by the assessee ITA Nos. **6060 to 6063/Mum/2024** are allowed.

Order pronounced in the open court on 16th day of July, 2025.

Sd/-

(SMT. RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 16/07/2025

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai