

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'H' NEW DELHI
BEFORE S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 5503/Del/2024 (A.Y. 2010-11)

M/s Toshiba Water Solutions (P) Ltd. 4 th Floor, Tower De, Pioneer Urbank Square, Secdtor-62, Gurugram, Haryana PAN: AAACU0043Q	Vs	ACIT Range-18 Delhi
Appellant		Respondent
Assessee by	Sh. Manish Malik, Adv& Sh. Pankaj Jain, ITP	
Revenue by	Sh. Amit Kumar Singh, Sr DR	
Date of Hearing	06/08/2025	
Date of Pronouncement	29/08/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (Ld. CIT(A)'/NFAC' for short), dated 15/10/2024 pertaining to the Assessment Year 2010-11.

2. Brief facts of the case are that, a return of income was filed declaring an income of Rs. 5,64,34,442/- by the Assessee. An assessment order came to be passed on 28/03/2023 by making certain additions and computing the income of the Assessee at Rs. 8,07,86,620/-. Consequent to the said assessment order, a penalty

proceedings have been initiated against the assessee and an order of penalty came to be passed u/s 271(1)(c) of the Act vide order dated 28/04/2023..

3. Aggrieved by the penalty order dated 28/04/2023, assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) vide order dated 15/10/2024 dismissed the appeal filed by the assessee.As against the order of Ld.CIT(A) dated 15/10/2024, the assessee has preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the Assessee vehemently contended that the order of penalty has been issued based on the defective notice issued u/s 274 read with Section 271 of the Act, wherein particular limb or charge for which the notice was issued has not been mentioned by striking off irrelevant limb mentioned in the printed format of the notice. Therefore, the Ld. Counsel for the assessee submitted that the penalty order passed based on the defective notice cannot be sustained.

5. Per contra, the Ld. DR submitted that the Ld.CIT(A) has adjudicated all the grounds including issuance of alleged defective notice and came to just conclusion by dismissing the appeal. The Ld. DR has relied on the orders of the Lower Authorities and submitted that no interference is required.

6. 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 ITO has not mentioned the specific charge or limb for which the notice was issued on the contrary irrelevant limb has not been stricken off. The said Notice dated 28/03/2013 is produced by the assessee is reproduced for ready reference.

19 I.T.N.S.-4

आयकर अधिनियम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन नोटिस
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

To 444CV00430 Income Tax Office,
New Delhi

M/S. UEM Indira Pvt. Ltd.
D-19, Kalkaji
New Delhi - 110019

Dated : 28-03-2013

Whereas in the course of proceedings before me for the assessment year 2010-11 it appears to me that you :-
 *have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated
 *have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.

You are hereby requested to appear before me at 4:00 A.M./P.M. on 29/04/2013 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 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.

u/s-271 (1) (c)

Seal



Assessing Officer.
Addl. Commissioner of
Income Tax
Range-18, New Delhi

*Delete inappropriate words and paragraphs.

7. 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.

8. 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. 1: 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--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(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 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". Kaushalya does 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 statute 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."

9. 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.

10. 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.

11. 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 28/04/2024 passed by the A.O for Assessment Year 2010-11 is hereby quashed. Accordingly, Assessee's Grounds of Appeal are allowed.

12. In the result, Appeal filed by the assessee is allowed.

Order pronounced in the open court on 29th August, 2025

Sd/-

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Date:- 29 .08.2025

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