IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.4304/MUM/2025
(A.Y. 2012-13)

M. Lakhamsi & Co. 505, Churchgate Chambers, 5, New Marine Lines, Mumbai – 400 020, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Circle– 17(1), Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai –400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABFM5192L		
Appellant/अपीलार्थी	··	**Respondent/प्रतिवादी**

Appellant by :	Mr. Ketan Vajani, CA
Respondent by :	Shri Annavaran Kasuri, (Sr. AR)

Date of Hearing	09.09.2025
Date of Pronouncement	13.10.2025

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is preferred by the assessee against the order passedby the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to a penalty order passed u/s. 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 30.03.2018 for the Assessment Year [A.Y.] 2012-13.

2. The grounds of appeal are as under:

1. *On the facts and in the circumstances of the case, the assessing officer has erred in levying penalty u/s. 271(1)(c) in pursuance of an invalid show-cause notice u/s. 271(1)(c), without specifying the charge under which the penalty is levied. The Commissioner of Income-tax (Appeal)-NFAC, has erred in confirming the penalty levied in pursuance of such invalid show-cause notice without any discussion on the specific ground raised in relation to the same. The appellant prays that the order imposing penalty may please be quashed.*
2. *The CIT(A) has erred in confirming the penalty of Rs. 47,74,794/- by passing the order without considering the specific request to keep the appeal pending since the quantum appeal was pending before the CIT (A). The CIT (A) has erred in not providing opportunity of hearing before passing the order despite of the specific request for the same.*
3. *Without prejudice to Ground - 1 and Ground 2 above, the assessing officer has erred in levying penalty u/s. 271(1)(c) in respect of the addition of Rs. 1,72,92,564/- on account of alleged undervaluation of stock. The CIT(A) has erred in confirming the penalty on this issue without any discussion and opportunity to present the case on merits.*
4. *The appellant respectfully submits that levy of penalty u/s. 271(1)(c) of the Act in respect of the above addition is not justified on legal principles. The appellant, therefore, prays that the penalty on this addition may please be deleted*

3. In **ground no.1,** the assessee has taken a legal plea that the ld.AO did not strike off either of the limbs in the show cause notice issued u/s 274 of the Act before imposing penalty u/s 271(1)© of the Act. The AO levied penalty Rs. 47,74,794/- in respect of the disallowance of Rs. 38,30,978/-on account of Foreign Exchange Loss and in respect of the addition of Rs. 1,72,92,564/- on account of alleged undervaluation of stock.It is noticed that penalty was levied on account of certain disallowances made in the assessment order which were upheld by the appellate authorities.

4. Before us, the ld. DR has contended that the issue of striking off of one of the limbs in the show cause notice was never raised before the lower authorities. He further placed reliance on the decision of co-ordinate bench of ITAT,Mumbai wherein it held in the case of Earth moving Equipment Service Corporation vide its order reported in (2017) 166 ITD 113 (Mumbai)/(2017) 187 TTJ 233 (Mumbai Tribunal) that mere non-ticking of the relevant clause in notice would not invalidate the penalty proceedings.The ld.DR submitted that from the quantum order it is seen that the AO clearly initiated the penalty proceedings, after due deliberation, for furnishing of inaccurate particulars which shows due application of mind qua penalty proceedings. Section 292B of the Act comes to the rescue of the revenue in such a case as in substance and effect the notice was in conformity with the intent and purpose of the act.He also placed reliance on hon'ble Madras High Court held in the case of Sundaram Finance Ltd. (2018) 403 ITR 407 (Madras)inter alia held that" *if the case of the assessee is that they have been put to prejudice and principles of natural justice were violated on account of not being able to submit an effective reply, it would be a different matter. This was never the plea of the assessee either before the Assessing Officer or before the first Appellate Authority or before the Tribunal or before this court when the tax case appeals were filed and*

*it was only after 10 years, when appeals were listed for final hearing, this issue is sought to be raised. Thus, on facts, it could be safely concluded that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under Section 274 r/w, section 271 of the Act. Principles of Natural Justice cannot be read in abstract and the assessee, being a limited company, having wide network in various financial services, should definitely be precluded from raising such a plea at this belated stage. By claiming depreciation on machinery which either did not exist or was never supplied, the assessee had not only concealed particulars of its income, but had also furnished inaccurate particulars of income."*SLP against this decision was dismissed by Hon'ble Supreme Court of India as reported in (2018) 99 taxmann.com 152 (SC)/(2018) 259 Taxman 220 (SC).He also relied on the hon'bleBombay High Courtheld in the case of **Kaushalya 216 ITR 660** that mere mistake in the language used or mere non-striking off of inaccurate portion could not by itself invalidate the notice. The Hon'ble Supreme Court in the case of **Dharmendra Textile Processors (2008) 306 ITR 277 (SC)** held that "*the explanations appended to section 271(1)(c) entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate*

particulars of income while filing return. The penalty under that provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability, as is the case in the matter of prosecution. It is well settled principle, in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of the legislative intent."

4.1 Per contra the ld.AR has submitted that the AO has failed to categorically charge the assessee since both the limbs have remained unchanged as one of them needed to be struck off which has not been done. He placed reliance on various judicial decisions in support of the grounds of appeal in this regard.

5. We have gone through the above penalty notice and find that the AO issued notice u/s 271(1)(c)/274 of the Act, stating that: "*you have concealed the particulars of your income by furnishing inaccurate particulars of income.*". These are both limbs of the notice, that is, "concealment of income" and for "furnishing inaccurate particulars of income". Therefore, it is abundantly clear that the AO has initiated penalty on both the limbs, that is, concealment of income and furnishing

of inaccurate particulars of income. He did not strike off the irrelevant portion and has not shown, whether he has initiated penalty on concealment of income or on furnishing inaccurate particulars of income. In this situation, the assessee was not aware about the exact nature of penalty and correct charge, whether it is on concealment of income or it is on furnishing of inaccurate particulars of income. Thus, we find that there is no definite charge on the assessee as to whether the assessee should be penalized for "furnishing inaccurate particulars of income" or "for concealment of income" therefore, on this account the penalty initiated by the AO is bad in law and therefore, the penalty so levied by the AO is liable to be cancelled. This approach is not sanctioned by the statute and amounts to an overreach of the AO's authority, for that reliance is placed on the judgement of the Hon`ble Supreme Court in the case **of Dilip N. Shroff v. Joint Commissioner of Income Tax (supraC),** wherein the Hon`ble Supreme Court held as follows:

> *"66. Section 271(1) (c) remains a penal statute. Rule of strict construction shall apply thereto. Ingredients of imposing penalty remains the same. The purpose of the Legislature that it is meant to be deterrent to tax evasion is evidenced by the increase in the quantum of penalty, from 20 per cent under the 1922 Act to 300 per cent in 1985.*
> *67. 'Concealment of income' and 'furnishing of inaccurate particulars' are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppressioveri or suggestiofalsi. Although it may not be very accurate or apt but suppressioveri would*

amount to concealment, suggestionfalsi would amount to furnishing of inaccurate particulars.
68. The authorities did not arrive at a finding that the consideration amount fixed for the sale of property was wholly inadequate. The authorities also do not show that what are the inaccurate particulars furnished by the assessee. They also do not state that what should have been the accepted principles of valuation. We, therefore, do not accept the submissions of the learned Additional Solicitor General that concealment or furnishing of inaccurate particulars would overlap each other, the same would not mean that they do not represent different concepts. Had they not been so, the Parliament would not have used the different terminologies."

5.1 The ld. DR made an argument based on the decision of the hon'ble Bombay High Court in the case of **Smt. Kaushalya & Others, 216 ITR 660 (Bom.)** to canvass support for his plea that non-striking off of the irrelevant portion of notice would not invalidate the imposition of penalty u/s 271(1)(c) of the Act. A combined reading of the decision rendered by Hon'ble Bombay High Court in the case of Smt. B Kaushalya and Others (supra) and the decision rendered by Hon'ble Supreme Court in the case of Dilip N Shroff (supra) would make it clear that there should be application of mind on the part of the AO at the time of issuing notice.

6. In the instant case, we are of the view that the AO has issued a notice, that too incorrect one, in a routine manner. Hence, in our view, the AO has failed to apply his mind at the time of issuing penalty notice to the assessee.As noted by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the quasi-criminal proceedings u/s

271(1)(c) of the Act ought to comply with the principles of natural justice, and in the present case, considering the observations of the AO in the assessment order alongside his action of non-striking off of the irrelevant clause in the notice shows that the charge being made against the assessee qua Sec. 271(1)(c) of the Act is not firm and, therefore, the proceedings suffer from non-compliance with principles of natural justice inasmuch as he is himself unsure and assessee is not made aware as to which of the two limbs of Sec. 271(1)(c) of the Act he has to respond.

6.1 The coordinate ITAT,Mumbai bench in the case of **ITA No962/Mum/2024 Triumph Securities Ltd** has in an exhaustive order involving similar issue has taken the same view of the matter quashing the penalty order.Relevant parts are extracted as under:

> "5. The Ld.AR invited our attention to the notice dated 27/12/2011 issued by the ACIT, Central Circle 40, Mumbai, annexed in APB page 1. The Ld.AR argued that the notice was duly reproduced by the Ld.CIT(A) in his order. The notice suffers from two defects; first of allthere is absence of section under which the showcause notice U/s 274 of the Act was issued and secondly, 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. Considering the fact of the case, the Ld.AR informed that related to addition of bad debt amount to Rs.4,21,55,018/- is duly deleted by the order of the co-ordinate bench of ITAT, Mumbai bearing ITA No.1873/Mum/2018, date of order 08/10/2021. So only the disallowance of depreciation on BSE card, Rs.10,03,320/- is sustained for addition. But mere disallowance for expenses cannot be the point of penalty which is duly covered by the order of the Hon'ble Apex Court **in CIT vs Reliance Petroproducts (P) Ltd 322 ITR 158 (SC).** The Ld. CIT(A) in alleged appeal order had respectfully referred the catena of judgements where the Hon'ble High Courts have taken view against the revenue related issuance of the defective notice. The relevant paragraphs of the alleged appeal order are reproduced as below:-

"6. DECISION:

6.1. I have carefully considered the submissions and contentions of the appellant and have also gone through the assessment order, notice by which the impugned penalty proceedings were initiated and also the impugned penalty order, it is seen that the AD had discussed the issues relating to the disallowances of Rs. 10,26,320/- and Rs.4,21,55,018 in paras 5 and 6, respectively, of the assessment order dated 27/12/2011 passed us. 143(3) road with Section 254 of the Act. in both the paragraphs, the AO had mentioned that the penalty proceedings uls 271(1)(c) of the Act were being initiated for furnishing inaccurate particulars and concealment of income. The AO has stated in paras 2 and 4.1 of the impugned penalty order that the penalty proceedings u/s 271(1)(c) of the Act had been initiated by notice uls. 274 read with Section 271(1)(c) issued on 27/12/2011 for concealment and furnishing inaccurate particulars of income. Further, as per para 13 of the impugned order, the penalty has been levied by the AO for concealment of income.
6.2 Before me, the AR of the appellant has, inter alia, filed a copy of notice dated 27/12/2011 issued by the AO u/s. 274 read with Section 271 of the Act for initiating penalty proceedings u/s.271(1)(c) of the Act.

6.3 It can be seen from the above that there is no mention at all about the charge of either furnishing of inaccurate particulars of income or concealment of the particulars of income, in the notice dated 27/12/2011 issued by the AO u/s. 274 read with Section 271 of the Act for initiating the penalty proceedings u/s. 271(1)(c) of the Act. The notice refers only to the failures to furnish return of income and to comply with notices issued, and here also, the relevant details are left blank and the clause which is not relevant is not struck off. It is only in the last paragraph that there is a mention about imposing of penalty u/s. 271(1)(c) of the Act on the appellant. Thus, I find that in the aforesaid notice, the AO had not specified any of the relevant charges either furnishing of inaccurate particulars of income or concealment of the particulars of income-being brought against the appellant.

6.4 It is pertinent to note that the entire legal controversy about identification of the relevant limb of penalty in the notice u/s. 274 read with Section 271 of the Act started with the judgment of Hon'ble Karnataka High Court in the case of **CIT & Anrs Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 0565 (Kar.),** wherein it was held that the notice u/s. 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), ie, whether it is for concealment of income or for furnishing of incorrect particulars of income.

6.5 Subsequent to the above judgment, in the case of **CIT v. SSA's Emerald Meadows 73 taxmann.com 241 (Kar.) (HC),** a Division Bench of Hon'ble Karnataka High Court, again taking note of the Manjunatha's case, dismissed the appeal filed by the Revenue holding that no substantial question of law arose for determination by the Court.

6.6 However, the **Hon'ble Bombay High Court, in the case of CIT Vs. Smt. Kaushalya &Ors. (1995) 216 ITR 0660,** has held that assessment having already been made before issue of notice under s 274(1) and assessee fully knowing in detail the exact charge of the Department against him, the

notice could not be said to have prejudiced the assessee by any ambiguity in its wordings and mere mistake in language would not invalidate the same.

6.7 Thereafter, the Hon ble Bombay High Court has taken a different view in **PCIT v. Goa Coastal Resorts [TXA/24/2019 (Bom)); (8) PCIT v. Goa Dorado [TXA/18/2019 (Bom)): (9) and in the case of PCIT v. New Era Sova Mine [TXA/70/2019 (Bom)).**

6.8 I find that this very issue has now been considered by the Full bench of **Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikhreported in (2021) 125 taxmann.com 253 (Bom).** In this case, the **Larger Bench** of the Hon'ble Jurisdictional High Court was referred an issue, that is, mere failure to tick mark the applicable grounds' in the notice issued under Section 271 of the Income Tax Act, 1961 (IT Act) vitiate the entire penalty proceedings. To this, it was held that a penal provision even with civil consequences, must be construed strictly and ambiguity, if any, must be resolved in the affected assessee's favour.

6.9 While making observation on the Judgment of Dilip N. Shroff, it was observed by the Hon'ble High Court that primary burden of proof is on the Revenue. The Assessing Officer must satisfy himself that there is primary evidence to establish that the assessee had concealed the amount or furnished inaccurate particulars. And this onus is to be discharged by the Revenue While considering whether the assessee has discharged his burden, the Assessing Officer should not begin with the presumption that he is guilty. Once the Revenue discharges its primary burden of proof, the secondary burden of proof, would shift on to the assessee. It is because the proceeding under Section 271(1)(c) is of penal nature in the sense that its consequences are intended to be an effective deterrent which will put a stop to practices which the Parliament considers to be against the public interest", So, it was for the Revenue to establish that the assessee shall be guilty of the particulars of income". **The Hon'ble High Court also relied on the Judgments of CIT v. Samson Pericherry, ITA/1154/2014 (Bom); PCIT v. Goa Dorado, TXA/18/2019 (Bom) and PCIT v. New Era Sova Mine TXA/70/2019 (Bom),** wherein it was observed that "No notice could be issued under Section 274, read with Section 271, of the Act without indicating which particular limb of Section 271(1)(c) was invoked for initiating the penalty proceedings". Finally, the larger Bench of Hon'ble high Courthas decided the matter with following findings:

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.

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

184. Indeed, Kaushalya 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". Kaushalya 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 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 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(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) 2 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, ITA No962/Mum/2024 Triumph Securities Ltd 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 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.*** *(emphasis added)*

6.10 Further, in another judgment, the Hon'ble Bombay High Court in **Pr. CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom)** also took similar view that where inapplicable portions were not struck off in the penalty notice, the penalty was vitiated. The SLP of the Department against this judgment has recently been dismissed by the Hon'ble Apex Court in Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 249 (SC).

6.11 I find that this very issue has recently been considered by the Hon'ble Delhi ITAT as well in the case of **ACIL Ltd. Vs ACIT, [2022] 137 taxmann.com 339 (Delhi -Trib.),** wherein it was held as follows:

"9. We have gone through the record in the light of the submissions made on either side. From the orders under challenge, it is very clear that the main grievance of the assessee is that the levy of penalty on the basis of notice which is vague and illegal cannot be sustained. Such a question of the legality or otherwise of assumption of jurisdiction by the learned Assessing Officer under a notice issued under section 271(1)(c) of the Act without striking off of the relevant limb under which the penalty is proposed is no longer res integra, and the Hon'ble jurisdictional High Court in the case of Pr. CIT v. Sahara India Life Insurance Co. Ltd. [2019] 108 taxmann.com 597/2021) 432 (TR 84 (Delhi), while noticing the addition of the Hon'ble Karnataka High Court in CIT v Manjunatha Cotton & Ginning Factory (2013) 35 taxmarin.com 250/218 Taxman 423/359 ITR 565 dealt with this issue.
10. In the case of **Manjunatha Cotton & Ginning Factory (supra).** Vide paragraph 60, the Hon'ble Karnataka High Court has held as follows:-
"60, Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in low. It is needless to point out satisfaction of the existence of the grounds mentioned in section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penally to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable."

In **CIT v. SSA's Emerald Meadows (2016) 73 taxmann.com 241** the Hon'ble Karnataka High Court Considered the question of law as to,-

"Whether, omission if 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?"

And the Hon'be High Court ruled answered the same in favour of the assessee observing that:

"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 on the decision of the Division Bench of this Court rendered in the case of Commissioner of Income Tax V. Manjunatha Cotton And Ginning Factory (2013) 359 ITR 565. 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."

The Special Leave Petition filed by the Revenue challenging the aforesaid judgement of the High Court was dismissed by the Hon'ble Supreme Court .

6.12 This issue has further been considered by the **Hon'ble Jurisdictional High Court in another recent decision in the case of [2022] 135 taxmann.com 244 (Bombay) Ganga Iron & Steel Trading Co. vs CIT,** wherein the penalty was directed to be deleted placing reliance on the decision of Hon'ble Full Bench in the case of **Mohd. Farhan A. Shaikh (supra),** with following findings:

"B. We may at the outset refer to the judgment of the Full Bench of this Court in Mohd. Farhan A. Shaikh (supra) wherein this precise question was considered and answered. The said question reads as under:
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?
9. After considering various decisions of the Hon'ble Supreme Court and of this Court including the decision in Dilip N. Shroff (supra) the Full Bench answered the aforesaid question as under:
"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 the 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 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."

It is thus clear from the law as laid down that even if there was an order recording satisfaction for imposing penalty on one or the other, or on both grounds as mentioned in section 271(1)(c) of the said Act, if the show cause notice suffers from the vice of vagueness the same would vitiate such notice"

10. We find that the law as laid down by the Full Bench applies on all fours to the facts of the present case as in the show cause notice dated 12-2-2008, the Assistant Commissioner of Income-tax is not clear as to whether there was concealment of particulars of income or that the Assessee had furnished inaccurate particulars of income. We therefore find that issuance of such show cause notice without specifying as to whether the Assessee had concealed particulars of his income or had furnished inaccurate particulars of the same has resulted in vitiating the show cause notice."(emphasis added)

6.13 It would be seen from the above decisions that where the charge is not properly set out in the notice u/s 274, that is, both the limbs stand therein without striking off of the inapplicable limb, but the penalty has been levied for one of the two, such a penalty order gets vitiated. However, in the present case, the situation is even worse, as the notice does not mention either of the charges/limbs. Accordingly, respectfully following the judgment of the Full Bench of the Hon'ble jurisdictional High Court and other decisions referred to above, I hold that the penalty in this case gets vitiated as the notice issued u/s 274 r.w.s. 271 has to be held as void ab initio. 1. therefore, overturn the impugned order and direct the AO to delete the penalty of Rs.1,75,48,609/- levied by the AO on the appellant u/s.271(1)(c) of the Act."

6. We have considered the rival submissions and examined the documents on record. The notice issued under Sections 271(1)(c) and 274 of the Act, dated 27/12/2011, does not specify the particular provision under which the penalty is imposed or the specific limb of the offense alleged. It is well-settled that when the basis for initiating penalty proceedings differs from the grounds on which the penalty is ultimately imposed, such imposition is invalid. The validity of a penalty order must be assessed based on the information, facts, and materials available to the authority at the time the order was passed. Subsequent discoveries or additional facts cannot validate an otherwise unsustainable penalty order. The DR has relied on the judgment of the Hon'ble Calcutta High Court in Thakur Prasad Sao & Sons (P.) Ltd. (supra), where the Hon'ble Court ruled in favor of the revenue by taking a contrary view.However, this issue is entirely legal and has been conclusively decided by the larger bench of the Hon'ble Jurisdictional High Court in Mohammed Farhan A. Shaikh (supra). Various judicial pronouncements, including the decision of the Hon'ble Karnataka High Court in CIT v. SAS Emerald Meadows (73 taxmann.com241), against which the Special Leave Petition (SLP) filed by the department was dismissed by the Hon'ble Supreme Court (73 taxmann.com 248), have consistently held that a notice under Section 274/271(1)(c) of the Act must explicitly state the specific charge or limb of the offense. In this case, the notice fails to identify the specific charge and does not clearly

distinguish between "concealment of income" and "furnishing inaccurate particulars of income."

6. In light of the binding judicial precedents cited above and the principle of *ratio decidendi* emerging from a plethora of decisions including those of the jurisdictional High Court, we are of the considered view that the impugned penalty is not sustainable on account of infirmities in the penalty order as discussed above. Accordingly, the appellate order is set aside, thus allowing the ground no.1.

7. We do not consider it necessary to delve into other grounds of appeal on merits since they are rendered academic and no purpose would be served in adjudicating the same.

8. In the result, the appeal of the assessee is **allowed.**

Order pronounced in the open court on 13/10/2025.

Sd/-	**Sd/-**
SANDEEP GOSAIN	**PRABHASH SHANKAR**
(न्यायिकसदस्य /JUDICIAL MEMBER)	**(लेखाकारसदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 13.10.2025
Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.