

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

**BEFORE JUSTICE (RETD.) C V BHADANG, PRESIDENT &
SHRI ARUN KHODPIA, AM**

I.T.A. No.1938/Mum/2024
(Assessment Year: 2008-09)

I.T.A. No.1937/Mum/2024
(Assessment Year: 2009-10)

I.T.A. No.1940/Mum/2024
(Assessment Year: 2010-11)

I.T.A. No.1939/Mum/2024
(Assessment Year: 2011-12)

I.T.A. No.1941/Mum/2024
(Assessment Year: 2012-13)

I.T.A. No.1942/Mum/2024
(Assessment Year: 2013-14)

I.T.A. No.1936/Mum/2024
(Assessment Year: 2014-15)

Rajesh B. Jain as Legal Heir of Bhanwarlal Jain, 171, 17 th Floor, Silver Arch, Petit Hall Compound, Nepeansea Road, Mumbai - 400006 PAN: AAFPJ1924R	Vs.	ITO, Ward-19(1)(1), Piramal Chamber, Lalbaug, Mumbai-400012.
Assessee -अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Madhur Agarwal, Adv,
Shri Fenil Bhat & Shri Suheck
Anchaliya, CA

(Virtually appeared)

Revenue by : Shri Ganesh Sudhakar Bare, CIT-
DR & Shri Leyaqt Ali Aafaqui,
Sr. DR

Date of Hearing : 20.01.2026

Date of Pronouncement : 29.01.2026

ORDER

Per Arun Khodpia, AM:

The captioned appeals are instituted at the instance of assessee, challenging the common order passed by Id. Commissioner of Income Tax (Appeals)-47, Mumbai (for short “Id. CIT(A)”), dated 23.02.2024 for the Assessment Years (AY) 2008-09 to AY 2014-15, which in turn arises from the order passed u/s 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 (for short “The Act”) by Deputy Commissioner of Income Tax, Central Circle-1(3), Mumbai, dated 28.03.2019 for AYs 2008-09 to AY 2013-14 and on 30.09.2019 for AY 2014-15.

2. At the threshold, it is apprised by Id. Authorized Representative (for short “Ld. AR”) representing the assessee (appellant) that all the aforesaid appeals arise against the penalty proceedings initiated and completed against the assessee under section 271(1)(c) r.w.s. 274 of the Act. It is further clarified that these appeals are assailed with the identical grounds of appeal, challenging the legality of notices issued under section 271(1)(c) of the Act, as well as on merits for imposing of such penalties. Since, all the aforesaid appeals are of the

same assessee, having identical / interconnected facts and circumstances, except the quantum of penalty imposed, thus for the sake of brevity are heard together and decided under this common consolidate order.

3. To adjudicate the issues in present appeals, since are on parity in terms of facts, circumstances, wordings or orders by the revenue authorities etc., **ITA No. 1938/Mum/2024**, as suggested by ld. AR has been taken up, as the lead case, wherein, the discussion, submissions, deliberation and thereafter the adjudication would apply *mutatis mutandis* to the remaining appeals under consideration herein.

4. The grounds of appeal in the lead case i.e., ITA No. 1938/Mum/2024 for AY 2008-09 are culled out as under:

“Following grounds of appeal are without prejudice to each other:

1. On the facts and circumstances of the case and in law, the Ld. CIT Appeal erred in confirming the penalty u/s 271(1)(c) of the Act for Rs. 1,13,35,645/- without appreciating the fact that the appellant had neither furnished any inaccurate particulars of income nor concealed any income during the relevant Assessment Year.

2. On the facts and circumstances of the case and in law, the Ld. CIT Appeal erred in confirming the penalty u/s 271(1)(c) of the Act without appreciating the fact that the Ld. AO has failed to record the satisfaction as specified in clause (a), (b) and (c) of sub-section (1) of section 271 of the Act, before the assessment proceedings were concluded.

3. On the facts and circumstances of the case and in law, the Ld. CIT Appeal erred in confirming the penalty u/s 271(1)(c) of the Act without appreciating the

fact that the Ld. AO did not "strike off the irrelevant portion and even the Assessment Order did not specify the particular limb of section 271(1)(c) under which the penalty was initiated.

4. On the facts and circumstances of the case and in law, the Ld. CIT Appeal erred in confirming the penalty u/s 271(1)(c) of the Act without appreciating the fact no penalty can be levied where the addition has been made on the basis of estimation of income.

5. On the facts and circumstances of the case and in law, the Ld. CIT Appeal erred in confirming the penalty of Rs. 27,63,572/- on the enhancement of income by CIT Appeal without appreciating the fact that Ld. CIT(Appeals) 47 had not initiated any penalty proceeding on the enhancement of income.”

5. The brief facts of the case are that the assessee has filed his return of income for AY 2008-09 on 07.07.2008 declaring total income at Rs. 3,89,625/-. The return of assessee was then processed under section 143(1) of the Act. Subsequently, the case of assessee was selected for scrutiny on account of search action conducted on Shri Bhanwarlal Jain Group cases by DGIT (Inv.), Mumbai on 03.10.2013 and observed that the assessee is involved in issuance of fictitious sales bills and accommodation entries of non-genuine unsecured loans. Consequentially, the proceedings under section 153A of the Act are initiated and the assessment was completed on 21.03.2016 under section 143(3) r.w.s. 153A of the Act, making therein an addition of Rs. 5,91,95,321/- (for AY 2008-09) on account of undisclosed commission income. As a result of addition, the penalty proceedings under section 271(1)(c) r.w.s. 274 of the Act was also initiated. Later, the assessee challenged the substantive quantum

addition before the ld. CIT(A), which was disposed of by the ld. CIT(A) vide Order No. 47/314/2015-16 dated 30.10.2017 and had partly scaled down the addition made by Ld. AO, thereby the reduced unaccounted commission income has been arrived at Rs. 2,58,45,378/-.

6. While the penalty proceedings were initiated, the assessee was confronted to clarify as to why penalty should not be levied under section 271(1)(c) of the Act. In response, the assessee made his submissions before the ld. AO, however the contentions raised by the assessee are not enough to satisfy the ld. AO, accordingly, a penalty @ 100% of the total tax was imposed for Rs. 1,13,35,645/-.

7. Being dissatisfied with the aforesaid penalty order u/s 271(1)(c) r.w.s. 274 dated 28.03.2019, assessee preferred an appeal before the ld. CIT(A) contesting the legality as well as the merits in imposing the penalty. Submissions were made before the ld. CIT(A) by the assessee on all the aspects; however, the ld. CIT(A) did not find any merit or substance in the contentions raised by the assessee, so observing no infirmity in the action of ld. AO, have dismissed the appeal of assessee by confirming the penalty imposed. The relevant observations of the ld. CIT(A) under the common order are extracted here under for the sake of completeness of facts:

“30. Decision on Ground Nos. 1 to 3: During the year under consideration i.e. AY 2014-15, it is found that search was conducted in the case of appellant and

other group entities on 03.10.2013. The AO has completed assessment and initiated penalty notice u/s. 271AAB of the Act. The section 271AAB of the Act provides for levy of penalty in a case where search has been initiated on or after 1st July, 2012. The new section provides that,-

(a) If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10% of undisclosed income subject to the fulfillment of certain conditions.

(b) If undisclosed income is not admitted during the course of search but disclosed in the return of income filed after the search, the taxpayer will be liable for penalty at the rate of 20% of undisclosed income subject to the fulfillment of certain conditions,

(c) In a case not covered under (a) and (b) above, the taxpayer will be liable for penalty at the rate ranging from 30% to 90% of undisclosed income.

30.1 *I have found that the appellant urged that the AO has not properly initiated penalty notice u/s. 271AAB of the Act. However, it is found from the records that the AO has issued show cause notice dated 06.04.2018 wherein explanation for why penalty should not be levied u/s. 271AAB of the Act was asked from the appellant. It is further observed that from para 29 of the assessment order that the appellant did not admit any of the undisclosed income and failed to give any declaration in his return of income filed in response to notice u/s. 153A. As the appellant already admitted during the search proceedings that accounts pertains to the business of benami concerns operated by him and family members and that the cash transactions mentioned in these accounts have not been reflected in the books of accounts of any of the benami concerns and providing only bogus and accommodation entries for commission to their clients. Hence, the AO mentioned that the appellant is liable to pay penalty under the provision of section 271AAB(1)(c) of the Act as he is not covered by the provisions of clauses (a) and (b) of 271AAB, Accordingly, the AO levied penalty of Rs. 6,32,16,811/- u/s. 271AAB(1)(c) of the Act @60% of Rs. 9,57,83,046/-.*

30.2 *Therefore, in the prevailing circumstances of the case, I find no infirmity in the action of the AO levying penalty of Rs. 6,32,16,831/- u/s. 271AAB of the Act. In this view of the matter, the penalty of Rs. 6,32,16,831/- levied by the AO is hereby upheld. Consequently, the ground nos. 1 to 3 of appeal are dismissed.”*

8. To challenge the aforesaid decision of Id. CIT(A), which as per the assessee, was not justified and tenable in the eyes of law, the assessee preferred the present appeals before us.

9. At the outset, Ld. AR initiated his arguments, requesting to take up the legal contention first as per Ground No. 3 of the instant appeal, claiming that the penalty imposed cannot be sustained as per the settled principles of law, as the Ld. AO failed to “strike off” the irrelevant portion / limb, even the assessment Order did not specify the particulars limb of section 271(1)(c) under which the penalty was initiated.

10. To substantiate / support / corroborate the aforesaid contention, Ld. AR drew our attention to the copy of notice u/s 274 r. w. s. 271(1)(c) issued on 21.03.2016, placed at assessee’s paper book (APB) page 1, demonstrating that the said notice was issued under a fixed template / prototype, without ‘striking off’ the irrelevant limb which is not applicable to the present case, neither any explicit default on the part of assessee have been specified in the said notice. Similir, notices were issued again on 06.04.2018 (APB page 2), 14.05.2018 (APB page 4) but with same analogy, having mention of the default as, “for

furnishing of inaccurate particulars of income and / or concealment of income”.

11. Ld. AR further took us to assessee’s reply dated 26.05.2018, submitted before the Ld. AO, clarifying that such notice without specific mention of the default is not in consonance with the decision of Hon’ble High Court of Karnataka, in the case of **CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Karn.)**, which clarifies that the notice u/s 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e., whether it is concealment of income or for furnishing of incorrect particulars of income, so the assessee should know the grounds which need to be met specifically, otherwise, the principles of natural justice are offended and on the basis of such a vague notice, no penalty could be imposed on the assessee. Assessee also referred to the case of **CIT Vs. SSA’s Emerald Meadows (2016) 73 Taxmann.com 241(Kar.)**, where in the findings in **CIT Vs. Manjunatha Cotton & Ginning Factory (supra)** was affirmed. Further, the revenue has challenged the identical issue before the **Hon’ble Apex Court** in the case of **Veerabhadrappa Sangappa & Co. ITA No. 5020 of 2009**, but SLP against the said order was dismissed.

12. To strengthen the aforesaid legal proposition, Ld. AR drew our attention to the penalty order u/s 271(1)(c) dated 28.03.2019, where in the

aforesaid contention raised by the assessee was not responded by the Ld. AO, whereas have imposed the penalty under following observation:

“26. The assessee in its reply has not been able to give a satisfactory reply to the stand taken by the Department. The assessee has not commented on the entire modus operandi admitted by the parties concerned. The parties to the transactions and their controlling key persons have categorically admitted in statement given under oath before the Department of providing only bogus & accommodation entries for commission to their clients.

27. The evidences gathered clearly proved that these parties have only provided accommodation entries for a consideration/commission to the willing parties. When entire modus operandi of these entities is that of only providing bogus and accommodation entries in the books and in fact the actual purpose of transactions is that of tax avoidance and introduction of unaccounted money in to books, there is no specific need to mention each and every name of the parties to the transactions in the statement itself. The same can be extracted from the books/documents maintained by such entry providers.

28. Further, reckoning the modus operandi enunciated above, details available on record and findings on record, it is not difficult to understand the manner in which the whole transaction of bogus loans has taken place. The logical corollary to the above fact leads to the conclusion that accommodation entry for loans are taken by investing the assessee's own unaccounted cash for which the assessee has not offered any explanation regarding its nature and source. Further, Since unsecured loans in question have been held to be mere accommodation entries i.e. bogus in view of the categorical findings discussed above, the commission element also to be held in the nature of bogus.

29. Further, it is also pertinent to mention here that, had the case been not selected for scrutiny, the assessee would have enjoyed the gross and willful neglect on its part. In other words, this disclosure would not have been made, had there not been a search and seizure action/survey u/s 131 of the Income Tax Act, 1961 at the

premises of the assessee. In view of above, the disclosure by the assessee does not seem to be voluntary and bona fide but under compulsion.

30. In the backdrop of the above mentioned facts and circumstances, the addition on the basis of which the penalty is initiated, is sustained and further, warrants the levy of penalty, as the assessee has accepted the addition made in the assessment order on account of suppression of true total income to the extent of additions as computed in the assessment order, when compared with the total income disclosed by the assessee in the return of income.

31. As noted above, the assessee has failed to furnish any specific reason or details of any mitigating circumstances due to which the non compliance occurred. Accordingly, I find that the assessee had no reasonable cause for committing the default of not furnishing correct particulars and thereby concealing her income. In the case of CIT v. Standard Mercantile Co. [(1986) 160 ITR 613 (Pat.)], it was held that it was for the assessee to show that he had reasonable cause for not complying with the provisions of the Act. It has also been laid down by the Hon'ble Supreme Court in a judgment reported in (1987) 165 ITR 14, 21-22 that the initial burden of discharging the onus of rebuttal is on the assessee. Once that initial burden is discharged, the assessee would be out of mischief unless further evidence was adduced. As to the nature of explanation to be rendered by the assessee, the Hon'ble Apex Court expressed its agreement with the Hon'ble Patna High Court's view to the effect that it was plain on principle that it was not the law that the moment any fantastic or unacceptable explanation was given, the burden placed upon him would be discharged and the presumption rebutted. It was further agreed that it is not the law that any and every explanation by the assessee must be accepted. It must be an acceptable explanation, acceptable to a fact-finding body.

32. It was held in ITO v. Gayatri Coal Supply Co. [(1999) 238 ITR (AT) 16 (Patna)] that "Once statutory obligation is cast on a person and such statutory obligation provides for a period of limitation within which a particular document is required to be submitted, failure to do so within the prescribed period of limitation, is by itself liable to be visited with penalty, unless explained by a reasonable cause."

33. Further, in the case of MAK Data P. Ltd vs. CIT (Supreme Court) the Hon'ble Supreme Court has held that:-

"It is the statutory duty of the assessee to declare its true income in the return of income filed by it from year to year and if the assessee had concealed true particulars of income than the assessee is liable for penalty proceedings u/s 271 read with s. 274 of the Act."

34. Further the Delhi High Court in the case of CIT Vs Zoom Communication Pvt. Ltd. vide ITA No. 07/2010 dated 24.05.2010 has held that:-

"The Court cannot overlook the fact that only a small percentage of the Income Tax Returns are picked up for scrutiny. If the assessee makes a claim which is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bonafide, it would difficult to say that he would still not be liable to penalty under Section 271(1)(c) of the Act. ITA No.7/2010 Page 14 of 18 If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bonafide while making a claim of this nature, that would give a licence to unscrupulous assesseees to make wholly untenable and unsustainable claim without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self Assessment under Section 143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a malafide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have."

35, It is also pertinent to mention here that, assessee was very well aware of his dutiful responsibility to file the correct particulars of income. Taking into consideration the above facts and circumstances, and particularly when

voluminous documents and statements of various persons, as referred to here in before, it is a proved case of concealment of income. It is observed that the assessee has not furnished any evidence during the assessment proceedings as well during penalty proceedings which could establish that there was a reasonable cause for not declaring the said incomes in his return of income filed with the Department. Moreover it was observed that the incomes involved are not meager amount. It shows that the assessee intention of evading taxes by not disclosing the income in the return of income filed with the Department. Thus, it is held that in the instant case mens rea is proved from the conduct of the assessee and that the assessee has concealed the income by furnishing inaccurate particulars of income and committed default u/s 271(1)(c) of the Act and this is a fit case for levy of penalty u/s 271(1)(c). It was held that the entirety of the circumstances must give a reasonable belief and point to the conclusion that the disputed income represented income, and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

36. In view of the aforesaid facts and the clear position of law as discussed above, I am convinced that the assessee had no reasonable cause for the failure on her part to file correct particulars of income and fully disclose her income as required under the provisions of the Income Tax Act, 1961. Besides the above, the assessee has not brought out any case under the Act and, therefore, question of considering any reasonable cause for the failure on its part cannot be considered. Accordingly, I am satisfied that the assessee had committed a default which is covered by the penal provision of 274 of the Act.

37. In view of the above, it is held that assessee has failed to offer bonafide explanation in respect of the committed default making this a fit case for levy of penalty, I am of view that the assessee is liable for penalty and the tax sought to be evaded' is computed pursuant to clause (iii) of section 271(1)(c) read with Explanation 4, as under:

1	The income in respect of which particulars have been concealed or inaccurate particulars have been furnished as detailed in the order.	Rs. 3,33,49,944/-
2	Tax on above income (Sr. No. 1) i.e 30% of	Rs. 1,00,04,983/-

3	Surcharge on Col. No. 2 @ 10%	Rs. 10,00,498/-
4	Education Cess on Col. No. 2+3 @3%	Rs. 3,30,164/-
5	Total Tax (2+3+4)	Rs. 1,13,35,645/-
6	Minimum penalty @ 100% being tax sought to be evaded	Rs. 1,13,35,645/-
7	Maximum penalty 300% being tax sought to be evaded	Rs. 3,40,06,935/-

38. Accordingly, the assessee is liable for minimum penalty of 100% Le. Rs. 1,13,35,645/- or a maximum penalty of 300% i.e. Rs. 3,40,06,935/- u/s. 271(1)(c) being the amount of tax that would have been chargeable on the income in respect of which inaccurate particulars have been furnished. The maximum penalty 300% is workout at Rs. 3,40,06,935/-.

39. In view of the merits of the case, I am satisfied that the case is fit for penalty at Rs. 1,13,35,645/- being 100% of tax sought to be evaded.

40. Hence, penalty u/s 271(1)(c) of IT Act 1961 of Rs. 1,13,35,645/- is accordingly levied. The assessee is directed to make payment of Rs. 1,13,35,645/- by way of penalty u/s 271(1)(c) of the IT Act, 1961. Issue demand notice.”

13. Ld AR further added, that the aforesaid irregularity in the notices, vitiating the entire proceedings of penalty was challenged before the Ld. CIT(A), who had dealt with such preposition by the assessee, had concluded that the nature of infraction in order to effect the provisions of section 271(1)(c) can be either of furnishing of particulars of income or concealment of income both, thus, the claim of assessee regarding not specifying the correct limb was rejected.

14. In support of the legal analogy emerging from the decision in the case of CIT Vs. **Manjunatha Cotton & Ginning Factory (supra)**, Ld. AR placed his reliance on the judgement of **Hon'ble Jurisdictional High Court of Bombay** in the case of **Mr. Mohd. Farhan A. Shaikh vs. DCIT [Bom. HC at GOA] Writ Petition No. 51 & 57/2012 dated 11th March 2021**. Hon'ble High Court in this case has discussed the effect striking off of the irrelevant limb / tick mark the correct limb in notice, so no need to curing the defect in notice by referring to the assessment order. The relevant questions which have an impact in adjudication of the present matter has been answered by the Hon'ble High Court under the following observations:

“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["J, in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. Dr. Binapani Dei["]. 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”

15. The ld. AR pointed out that this Tribunal in the following decisions has granted relief to the assesseees, placing reliance on the decision of **Bombay High Court in Mr. Mohd. Farhan A Shaikh (supra):**

1. **PCIT vs. Jehangir H.C. Jehangir [Bom. HC]**
[2023] 155 Taxmann.com 209
2. **Ritu Multitrade Services (P.) Ltd. vs. ITO [Mum ITAT]**
[2024] 164 Taxmann.com 121
3. **DCIT vs. Chakradhar Contractors and Engineers (P.) Ltd. [Pune ITAT]** [2025] 171 taxmann.com 133
4. **Kasat Prakash M (HUF) vs. ITO, Ward-1, [Pune ITAT]**
[ITA No. 1328/Pun/2023]

16. The ld. AR further submitted, a recent judgment by **Hon’ble Bombay High Court in ITA No. 58 of 2020 PCIT vs. Pacific Organics Pvt. Ltd. dated 29.04.2025**, wherein the decision relied upon by the revenue in the case of **Veena Estate (p.) Ltd. vs. Commissioner of Income Tax [2024] 125**

Taxmann.com 341 (Bombay) has been distinguished and held that the notice must be precise and there should be no room for ambiguity, the relevant findings of **Hon'ble Bombay High Court**, are extracted as under:

“2. Without going into the issue of whether this Appeal falls within the exempted categories or not, we have heard Mr. Sharma, learned counsel for the Appellant, on the merits. One of the main reasons why the ITAT has held against the Appellant-Revenue is that the show cause notice was ambiguous, in that the relevant portions were not ticked, or the irrelevant portions were not struck off.

3. An identical issue was considered by the Full Bench of this Court, in the case of Mohd. Farhan A. Shaikh V/s. Deputy Commissioner of Income Tax, Central Circle 1, Belgaum, wherein it was held that if the notice contains no caveat that the inapplicable portion was to be deleted, any action based on such notice would be inferred. The Full Bench held that the notice must be precise and there should be no room for ambiguity. The ITAT has followed decisions which the Full Bench subsequently approved in Mohd. Farhan A. Shaikh (supra).

4. Mr Sharma, however, relied upon Veena Estate (P) Ltd. V/s. Commissioner of Income-tax. In this case, the Appellant-Assessee, who had never raised any ground about the ambiguity of the notice before the Assessing Officer, Appellate Authority and ITAT, attempted to raise such a ground for the first time in an Appeal under Section 260-A of the Income Tax Act. This was not allowed by the coordinate bench. Such facts do not obtain in the present Appeal, and therefore, based upon the decision in Veena Estate (P) Ltd. (Supra), we cannot fault the ITAT for having taken the view aligning with that taken by the Full Bench in the case of Mohd. Farhan A. Shaikh (supra)//”

17. In backdrop of the aforesaid submissions, it was the prayer by ld. AR that, since the issue of not striking off of incorrect limb or on account of no

specific identification of the correct limb in the notice under section 274 of the Act, the entire penalty proceedings are vitiated, consequently, the penalty levied cannot be sustained.

18. Per contra, ld. CIT-DR representing the revenue, in rebuttal has submitted that the satisfaction was duly recorded by ld. AO, as extensive evidence surfaced during the search against the assessee. Further, the penalty order was strengthened by the ld. CIT(A) by upholding the same in clear words that the case of assessee falls under both the categories, therefore there was no need to strike off of particular limb. The ld. CIT-DR also confronted with the decision by **Hon'ble Bombay High Court** in the case of **Md. Farhan (supra)** in support of which he placed reliance on the decision of **Veena Estate (P.) Ltd. [2014] (supra)**, however such argument by the ld. CIT-DR was clarified in rebuttal by the ld. AR by referring to the decision in the case of **PCIT vs. Pacific Organic Pvt. Ltd. (supra)**. The ld. CIT-DR, thereafter, had vehemently supported the orders of ld. AO as well as ld. CIT(A) and contended to upheld the same.

19. We have considered the rival submissions, perused the material available on record and the case laws relied upon by the parties. Admittedly, the issue of striking off of incorrect limb was discussed in detail by **Hon'ble Karnataka High Court** in the case of **CIT vs. Manjunatha Cotton & Ginning Factory (supra)**, which was further affirmed in the case of **CIT vs.**

SSA's Emerald Meadows (supra) and has reached the finality to become the law of land, which has been followed consistently by Hon'ble High Courts and the Tribunals in their subsequent decisions. The cases referred to by the revenue in their defense are somehow distinguishable on facts and circumstances, as clarified by the ld. AR during the hearing, therefore would not be of any rescue to them. Since the issue as of now is no more *res-integra*, therefore according to the settled principle of law on the aforesaid issue as again recently has been held by the **Hon'ble Bombay High Court** in the case of **PCIT vs. Pacific Organics Pvt. Ltd. (supra)**, we find substance in the contention raised by the ld. AR, we therefore are fully convinced to delete the penalty imposed under section 271(1)(c) r.w.s. 274 of the Act in the present matter. We direct accordingly.

20. Since, the penalty imposed under section 271(1)(c) of the Act vide order dated 28.03.2019 has been held to be bad in law and directed to be deleted, on account of non-striking off of the incorrect /irrelevant limb, so impliedly not specific identification of correct limb, the other contentions raised by the assessee on legal aspects as well as merits of the facts are rendered as academic only, thus needs no separate adjudication.

21. In result, **ITA No. 1938/Mum/2024 for AY 2008-09** of the assessee **stands allowed.**

22. Admittedly, being on parity in terms of facts and circumstances, our observations and decision in **ITA No. 1938/Mum/2025 for AY 2008-09** shall apply *mutatis mutandis* to the remaining appeals in **ITA Nos. 1936, 1937, 1939, 1940, 1941 & 1942/Mum/2025 for AYs 2009-10 to AY 2014-15.**

23. Consequently, in combined result all the captioned appeals of the assessee for respective Assessment Years are **allowed**, in terms of our aforesaid observations.

Order pronounced in the open court on 29-01-2026.

Sd/-
(JUSTICE (RETD.) C V BHADANG)
President
Mumbai, Dated : 29-01-2026.
**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
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