

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI JAGADISH, ACCOUNTANT MEMBER**

**ITA Nos.7130,7131,7132/M/2025
Assessment Year: 2009-10 to 2011-12**

Chiragkumar Rajendrabhai Shah, D-305, Shri Siddhivinayak Tower, Orlam, Off. Tank Road, Malad West, Mumbai -400064. PAN -AFXPS7904P.	Vs.	ITO, Ward 30(1)(2), [NOW] ITO Ward 41(3)(1), Room No. 847, 8 th Floor, Kautilya Bhavan, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri A K Sharma, Adv.
Revenue by : Shri Virabhadra Mahajan, (SR. D.R.)

Date of Hearing : 08.01.2026
Date of Pronouncement : 05.02.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 27.08.2025, impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2009-10.

2. Three appeals under consideration are having involved identical facts and issues; therefore, for the sake of brevity, the same were heard together and are being disposed of by this composite order, taking into consideration ITA No. 7130/M/2025 as lead case and the result of the same shall apply *mutatis mutandis* to all the appeals under consideration.

3. Considering the reasons explained by the Assessee for the four days delay in filing the instant appeal as plausible and reasonable, the delay is condoned.

4. Coming to ITA No. 7130/M/2025, we observe that the Assessing Officer, vide assessment order dated 30.03.2014, ultimately made an addition of Rs.8,23,49,198/- as unexplained expenditure under section 69C of the Act and added the same to the total income of the Assessee. The Assessing Officer simultaneously also initiated penalty proceedings for concealment of particulars of income and issued notice dated 30.03.2014 under section 274 read with section 271(1)(c) of the Act for concealment of particulars of income **OR** furnishing of inaccurate particulars of income.

5. Thereafter, the Assessing Officer also issued another notice dated 28.03.2018 under section 274 read with section 271(1)(c) of the Act, by which the Assessee was granted an opportunity to show cause "as to why an order imposing a penalty should not be made under section 271(1)(c) of the Act on or before 13.04.2018". However, the AO, on 30.03.2018 itself, passed the penalty order under section 271(1)(c) of the Act, levying a penalty of Rs.70,00,000/- for concealment of income.

6. Though the Assessee challenged the validity of the penalty order by filing a first appeal before the Ld. Commissioner; however, could not get succeeded, as the Ld. Commissioner, not only on the legal aspects, such as non-mentioning of the clear charge/head in the notice under section 274 of the Act for levying the penalty, but also on merits, affirmed the penalty. However, the Ld. Commissioner directed the Assessing Officer to modify the quantum of penalty in consequence to the decision of the Hon'ble Tribunal in quantum appeal.

7. Thus, the Assessee, being aggrieved, has preferred the instant appeal.

8. The Assessee disputed the findings of the Ld. Assessing Officer and the Ld. Commissioner in making and sustaining the penalty, mainly on the ground that the notice dated 30.03.2014 issued under section 274 read with section 271(1)(c) of the Act, being foundation of the penalty levied vide penalty order dated 30.03.2018, which was defective and/or confusing. Whereas, the Ld. DR supported the orders passed by the authorities below.

7. We have heard the parties and perused the material available on record. As observed above, the Assessing Officer, vide assessment order dated 30.03.2014, made an addition of Rs.8,23,49,198/-, which was sustained by the then CIT(Appeals), vide order dated 09.04.2014 to the extent of 25%, i.e., Rs.2,05,87,299/-. The Hon'ble Tribunal, by order dated 03.04.2018 in ITA Nos. 4086 to 4088/M/2016, subsequently restricted the said addition to 12.5% of the total disallowance made by the Assessing Officer.

8. As, the Assessee has raised a legal point/ground, which goes to the root of the case, therefore, before delving into the merits of the case, we deem it appropriate to decide the legal ground first.

9. Coming to the legal ground raised by the Assessee, we observe that the Assessing Officer, in the assessment order dated 30.03.2014 passed under section 143(3) read with section 147 of the Act, simultaneously initiated penalty proceedings under section 274 read with section 271(1)(c) of the Act for concealment of particulars of income and subsequently issued a notice dated 30.03.2014 under section 274 read with section 271(1)(c) of the Act for concealment of particulars of income **or** furnishing of inaccurate particulars of income and on the basis of such notice,

ultimately levied the penalty of Rs.70,00,000/- under section 271(1)(c) of the Act for concealment of income.

10. Admittedly, in the notice dated 30.03.2014 issued under section 274 read with section 271(1)(c) of the Act, the Assessing Officer has not specified the specific limb / charge for initiating the penalty proceedings, so as to make the Assessee aware "as on what charge/limb penalty proceedings have been initiated and/or on what charge the Assessee has to defend the case.

11. Though the Ld. DR drew attention of this Court to the notice dated 28.03.2018 issued under section 274 read with section 271(1)(c) of the Act, whereby the specific charge of concealment of particulars of income was communicated to the Assessee and the Assessee was show-caused to appear on 13.04.2018, either personally or through a duly authorised representative, to reply as to why an order imposing a penalty should not be made under section 271(1)(c) of the Act. Therefore, it is a fact that, in such notice, the date for compliance was given as 13.04.2018. but the Assessing Officer, prior to the said date, passed the penalty order on 30.03.2018 itself, i.e., anti-date, as prescribed in the notice. Thus, such notice lost its sanctity and would be of no help to the Revenue.

12. We observe from the impugned order that though the Ld. Commissioner has also considered the aspect qua non-specification of the limb/charge for initiating penalty proceedings by issuing a notice dated 30.03.2014 under section 274 read with section 271(1)(c) of the Act, by relying on various judgments, however, it is a fact that the Ld. Commissioner has not considered the judgment of the Hon'ble Jurisdictional High Court in the case of *Md. Farhan A Shaikh vs. DCIT* (2021) 434 ITR 1 (Bom.) (HC) (FB) and various other judgments of the jurisdictional Benches of the Tribunal, including in the case of *Korbusier Kinema Private Limited,*

Juhu vs. NFAC ACIT, Circle-15(1)(2), ITA No. 1016/M/2025, decided on 01.05.2025 wherein, the Hon'ble Coordinate Bench of the Tribunal not only considered the judgment of the Hon'ble Jurisdictional High Court in the case of Md. Farhan A Shaikh (*supra*), but also in the case of **Veena Estate (P) Ltd. vs. CIT (2024) 461 ITR 483 (Bom.)**, which was delivered in favour of the Revenue, and held as under :

5. Thereafter, the AO issued a show cause notice dated 27.12.2008 for concealment of the particular of income or/and furnishing of inaccurate particulars of such income and ultimately vide penalty order dated 18.01.2022 u/s 271(1)(c) of the Act imposed the penalty to the tune of Rs.9.97.234/being 200% of the tax sought to be evaded on the income of Rs.14.95.851/-.

M/s. Korbusier Kinema Private Limited

6. The Assessee, being aggrieved, challenged the said levy of penalty before the Ld. Commissioner, however, of no avail, as the Ld. Commissioner vide impugned order dated 17.12.2024 affirmed the levy of penalty.

7. The Assessee, being aggrieved, challenged the decision of the Ld. Commissioner on various aspects including notice issued u/s 274 of the Act dated 27.12.2018 and by relying on the judgment passed by the Hon'ble Jurisdictional High Court in the case of Md. Farhan A Shaikh vs. DCIT (2021) 434 ITR 1 (Bom.) (HC) (FB).

8. On the contrary, the Ld. D.R. refuted the claim of the Assessee by placing reliance on the judgment in the case of Veena Estate (P.) Ltd. vs. CIT (2024) 461 ITR 483 (Bom.) passed by the Hon'ble Jurisdictional High Court, concerning the identical issue, wherein it was held that if an Assessee does not challenge the validity of notice during the penalty or appellate proceedings but instead responds substantially to the allegations, such objections are barred at a later stage.

9. We have heard the parties and perused the material available on record. As the issue/ground raised by the Assessee qua notice u/s 274 of the Act, goes to the root of the case, hence for the sake of brevity, we are inclined to decide this ground first. Admittedly, the AO issued the penalty notice dated 27.12.2018 u/s 274 of the Act which is reproduced herein below:

OFFICE OF THE
ASSISTANT COMMISSIONER OF INCOME-TAX-15(2)(1)
480, 4th Floor, AAYKAR BHAVAN, M.K.ROAD,
MUMBAI - 400 020

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF THE
INCOME TAX ACT, 1961**

PAN: AACCK5760A
Status : Company
Dated : 27.12.2018

**M/S KORBUSIER KINEMA PVT LTD
10, YOGI SMRUTI, N.S. ROAD
JVPD SCHEME, MUMBAI 400049**

Sir/ Madam,

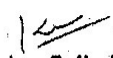
Whereas in the course of proceedings before me for the assessment year **2011-12** it appears to me that you: - *have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income-Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income - Tax Act, 1961, No..... dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-Tax Act, 1922 or under section 142(1)/143(2) of the income-tax Act, 1961.

No..... dated

***have concealed the particulars of your Income or/and
.....furnished inaccurate particulars of such Income.**

*You are hereby requested to appear before me at **Aayakar Bhavan, Room No.357, 11:00 A.M. on...or before Fifteen days of the receipt of this notice** and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961, If you do not wish to avail yourself of this opportunity of being heard in person or through 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(1)(c).


(Ketan Gajjar)

Place : Mumbai.
Date : 27.12.2018

Asst. Commissioner of Income-tax 15(2)(1)
Mumbai

10. From the notice, it clearly appears that the AO has used or/and in between both of the limbs, which goes to show that the AO was not sure under which limb the penalty proceedings have been initiated and to be carried out. Therefore, issue emerges "as to whether the defective notice and/or not mentioning the charge/limb specifically in the notice u/s 274 r.w.s. 271(1)(c) of the Act can justify the levy of penalty". The Hon'ble Jurisdictional High Court in the case of Md. Farhan A Shaikh (supra) has dealt with the identical issue and considered various judgments in this respect and ultimately held "mere defect in the notice non striking of the irrelevant matter - vitiate the proceedings" and therefore respectfully following the dictum laid down by the Hon'ble Jurisdictional High Court, in our considered view, the penalty under consideration is liable to be deleted.

11. Coming to the judgment relied on by the Ld. D.R. in the case of Veena Estate (P.) Ltd. (supra), we observe that in that particular case the notice u/s 274 of the Act was challenged after 23 years for the first time before the Hon'ble High Court by raising additional ground, which was not admitted and rejected by the Hon'ble High Court by interim order. Here it is not the case so, as in the instant case the Assessee has challenged the notice u/s 274 r.w.s. 271 of the Act before the second appellate authority and within a reasonable time and therefore the judgment referred to by the Ld. D.R. is factually dissimilar.

12. Even otherwise, the Hon'ble Jurisdictional High Court in the Full Bench case in the case of Md. Farhan A Shaikh (supra) has elaborately dealt with the issue and the relevant judgments and therefore respectfully following the said judgment, we are inclined to delete the penalty imposed by the AO and affirmed by the Ld. Commissioner. Thus, the penalty is deleted.

13. We further observe that the Hon'ble Jurisdictional High Court, recently in the case of Principal Commissioner of Income Tax -6 vs. Colo Colour Private Limited (Income Tax Appeal No. 48 of 2022), decided on 16.09.2025, also dealt with an identical issue, qua not specifying the relevant limb/charge for initiating the penalty proceedings and held as under:

16. It is well settled that the condition precedent for levy of penalty under Section 271(1)(c) is only when the Assessing Officer, in the course of proceedings, is satisfied that an assessee has concealed the particulars of his income or has furnished inaccurate particulars of income. Thus, in applying the penalty provisions under Section 271(1)(c), it was necessary for the Assessing Officer to reach to a conclusion, that the assessee

had consciously concealed the particulars of his income and/or had deliberately furnished inaccurate particulars of income to gain an undue advantage of not offering the real income to tax. A clear subjective satisfaction of these essentials is a sine qua non for the Assessing Officer to levy a penalty. Penalty proceedings are penal in nature, as the intention of such provisions is to create an effective deterrent, which will restrain the assessee from adopting any practices detrimental to the fair and realistic assessment as the law would mandate.

14. The Hon'ble High Court has held that there cannot be two opinions that section 271(1)(c) of the Act is required to be strictly construed. Hence, in the absence of a clear position regarding concealment of particulars of income **or** furnishing of inaccurate particulars of income in the facts of the present case, penalty proceedings could not have been initiated.

15. The Hon'ble Karnataka High Court in the case of *Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar)*, has also dealt with identical notice and held as under:

7.2. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court also held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clause would lead to an inference of non-application of mind by the Assessing Officer and levy of penalty would suffers from non-application of mind.

16. The Hon'ble High Court of Delhi in the case of M/s. Sahara India Life Insurance Company Ltd. 432 ITR 84 (Del.) while following the above judgement in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar), held as under:

"21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify

which limb of Section 271(1)(c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for hesitation to delete the penalty levied by the AO and affirmed by the Ld. Commissioner.

17. Thus, on the aforesaid analyzations, we are unable to sustain the penalty levied under section 271(1)(c) of the Act. Hence, the same is deleted.

18. In the result, ITA No. 7130/M/2025 is allowed.

19. In view of judgment in ITA No. 7130/M/2025, **all the three appeals stand allowed.**

Order pronounced in the open court on 05.02.2026.

**Sd/-
(JAGADISH)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Tarun Kushwaha
Sr. Private Secretary.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.