आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

श्री विजय पाल राव, उपाध्यक्ष एवं श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA No.126, 127 & 128/Hyd/2025**

(निर्धारण वर्ष/Asst. Year:2007-08, 2008-09 & 2009-10)

Sunil Kumar Ahuja, Hyderabad. PAN: ABLPA2822L	Vs.	Income Tax Officer, Central Circle-1(1), Hyderabad.
(Appellant)		(Respondent)

निर्धारिती द्वारा/Assessee by:	Shri S. Rama Rao, Advocate
राजस्व द्वारा/Revenue by::	Dr. Sachin Kumar, Sr. AR
सुनवाई की तारीख/Date of hearing:	02/02/2026
घोषणा की तारीख/Pronouncement:	11/02/2026

आदेश/ORDER

Per Madhusudan Sawdia, A.M.:

The captioned three appeals are filed by Shri Sunil Kumar Ahuja ("the assessee"), feeling aggrieved by the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)"), all dated 25.11.2024 for the A.Y.2007-08, A.Y.2008-09 and A.Y.2009-10 respectively. Since all these three appeals are related to the same assessee and the issues involved are identical, they are heard together and one consolidated order is being passed for the sake of convenience and brevity.

ITA No. 126/Hyd/2025 for A.Y. 2007-08 :

2. The assessee has raised the following grounds of appeal:

"1. The penalty order u/s 271(1)(c) passed by the Ld. Commissioner of Income Tax (Appeals) is erroneous both in law and on the facts and circumstances of the case.

2. The penalty order u/s 271(1)(c) passed by the Ld. Commissioner of Income Tax (Appeals) is not sustainable in law that the notice was lacking recording of mandatory satisfaction of specific default on the part of the appellant i.e., concealment of any particulars of income or furnishing of inaccurate particulars of such income and penalty levied is of Rs.1,79,230/-

3. Any other grounds that may be urged at the time of hearing with the leave of the Hon'ble Income Tax Appellate Tribunal."

3. The brief facts of the case are that the Learned Assessing Officer ("Ld. AO") levied a penalty of Rs.1,79,230/- under section 271(1)(c) of the Income Tax Act, 1961 ("the Act") on the assessee for the Assessment Year 2007–08 vide order dated 28.11.2023. Aggrieved by the penalty order, the assessee preferred an appeal before the Ld. CIT(A). However, the assessee did not succeed before the Ld. CIT(A), and the appeal was dismissed, thereby confirming the penalty imposed by the Ld. AO.

4. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal. Under Ground No.2 of the appeal, the assessee has raised a legal ground challenging the very validity of the penalty proceedings initiated under section 271(1)(c) of the Act. The Learned Authorised Representative ("Ld. AR") submitted that the show cause notice issued by the Ld. AO under section 274 read with section 271(1)(c) of the Act dated 30.12.2010 ("SCN") is invalid in law, as the Ld. AO failed to specify the exact limb under which the penalty proceedings were sought to be initiated. The Ld. AR invited our attention to the SCN, wherein the Ld. AO has merely stated that the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. According to the Ld. AR, the SCN suffers from vagueness, as the Ld. AO did not strike off the irrelevant portion nor clearly specify whether the penalty was proposed for concealment of income or for furnishing of inaccurate particulars of income. It was submitted that both limbs under section 271(1)(c) of the Act carry different connotations and consequences, and the assessee must be

made aware of the exact charge so as to enable him to defend effectively. The Ld. AR contended that such non-specification of charge vitiates the entire penalty proceedings, and consequently, the penalty order passed pursuant thereto is liable to be quashed. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. State Bank of India (471 ITR 761), wherein it has been held that failure to specify the exact limb in the notice issued under section 274 of the Act renders the penalty proceedings invalid. Accordingly, the Ld. AR prayed that the penalty order passed by the Ld. AO and sustained by the Ld. CIT(A) is liable to be quashed.

5. Per contra, the Learned Departmental Representative ("Ld. DR") relied on the orders of the lower authorities. The Ld. DR placed reliance on the judgment of the Hon'ble Bombay High Court in the case of Veena Estate Pvt. Ltd. Vs. CIT (461 ITR 483) and submitted that where the assessee has not raised any objection regarding the alleged defect in the notice at the initial stage, such objection cannot be permitted to be raised at the Tribunal stage, particularly in the absence of any prejudice caused to the assessee. It was submitted that in the present case, the assessee never objected before the lower authorities regarding the alleged defect in the SCN. Therefore, according to the Ld. DR, the assessee is not entitled to raise such an objection for the first time before the Tribunal.

6. In rejoinder, the Ld. AR submitted that the contention of the Ld. DR is factually incorrect. It was pointed out that the assessee had specifically raised this objection before the Ld. CIT(A) under Ground No.3 of the appeal. Therefore, it cannot be said that the objection is being raised for the first time before this Tribunal. Further, it was submitted that the reliance placed by the Ld. DR on the decision of the Hon'ble Bombay High Court in the case of Veena Estate Pvt. Ltd. Vs. CIT (supra) is misplaced, as in that case the assessee had raised the objection after an inordinate delay of about 23 years, and that too for

the first time before the Hon'ble High Court. Hence, the facts of that case are clearly distinguishable and not applicable to the facts of the present case.

7. We have heard the rival submissions, perused the material available on record, and carefully considered the judicial precedents relied upon by both the parties. It is an undisputed fact that the SCN does not specify the exact limb under which the penalty proceedings were initiated. In this regard we have gone through the SCN, which is to the following effect:

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

Office of the
Assistant Commissioner of Income Tax
Central Circle -1, Hyderabad.

PAN : ABLPA2822L

Dated :: 30.12.2010

To

Shri Sunil Kumar Ahuja
Flat No-601, Khanchand Towers
6-3-190/1, Road No-1, Banjara Hills, Hyderabad

Whereas in the course of proceedings before me for the assessment Year **2007-08** it appears that you have concealed the particulars of Income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 11.00 AM on **17.01.2011** 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 authorized 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.

(R M MUJUMDAR)
Asst. Commissioner of Income Tax
Central Circle – 1, Hyderabad

(S E A L)

8. On perusal of the above we find that, the SCN clearly shows that the Ld. AO has used the expression “concealed the particulars of income or furnished inaccurate particulars of such income” without striking off the irrelevant portion. The law is now well settled that penalty under section 271(1)(c) of the Act can be levied only when the assessee is made aware of the specific charge against it. The two limbs i.e. concealment of income and furnishing of inaccurate particulars of income, operate in different factual situations, and ambiguity in the notice strikes at the very root of the penalty proceedings. In this regard we have gone through the judgement of the Hon’ble Delhi High Court in the case of PCIT Vs. Shyam Sunder Jindal, 461 ITR 501, which was affirmed by the Hon’ble Supreme Court by dismissal of Revenue’s SLP in the case of PCIT Vs. Shyam Sunder Jindal, [2024] 164 taxmann.com 503 (SC), wherein at para nos. 3 to 6 of its order, the Hon’ble High Court has held as under:

> *“3. Counsel for the appellant/revenue does not dispute that none of the penalty notices issued to the respondent/assessee for the aforementioned AYs advert to the specific limb of section 271(1)(c) of the Income-tax Act, 1961 [in short, "the Act"] which is triggered against him.*
>
> *4. In other words, it is not clear whether the Assessing Officer (AO) intended to levy a penalty on the respondent/assessee for concealment of particulars of his income, or furnishing inaccurate particulars. This issue is covered against the appellant/revenue in a catena of judgments, including the judgment rendered by the coordinate bench in the matter of Pr. CIT v. Ms Minu Bakshi. 2022:DHC:2814-DB.*
>
> *4.1 The relevant observations made in the said judgment are extracted hereafter:*
>
> > *"7. In our opinion, the conclusion reached by the Tribunal in the instant case that the notice for imposition of penalty under section 271(1) (c) of the Act, did not specify which limb of the said provision the penalty was sought to be levied, is covered by the following decisions, which includes a decision rendered by a coordinate bench of this Court.*
> >
> > *(i) CIT and Anr. v. M/s SSA's Emerald Meadows, passed in ITA No. 380/2015, dated 23-11-2015.*
> >
> > *(ii) Commissioner of Income-tax v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.)*

(iii) PCIT v. M/s Sahara India Life Insurance Company Ltd., passed in ITA No. 475/2019, dated 2-8 2019.

7.1 To be noted, the Special Leave Petition filed against the judgment in SSA's Emerald (mentioned above) was dismissed via order dated 5-8-2016.

7.2 We are in agreement with the view taken by the Karnataka High Court in the above-mentioned judgments (in SSA's Emerald and Manjunatha Cotton) and, in any event, are bound by the view taken by the coordinate bench of this court in the Sahara India case."

5. This view has also been followed by this court in Pr. CIT v. Unitech Reliable Projects (P.) Ltd. 2023:DHC:4258-DB.

5.1 The following observations made in the Unitech Reliable Projects (P.) Ltd. case (supra), being relevant insofar as this case is concerned, are extracted hereafter: "19. We may note, that even the assessment order dated 14-3-2015, whereby penalty proceedings were triggered, did not indicate as to which limb of section 271(1)(c) was being triggered qua the petitioner. This is evident from the following observation made by the AO: "Penalty proceeding u/s 271(1)(c) is being initiated separately for concealment of income & for furnishing inaccurate particulars of income."

20. We may note, that another coordinate bench of this Court, of which one of us [i.e., Rajiv Shakdher, J.] was a party has reached the same conclusion in PCIT v. Minu Bakshi 222 (7) TMI 1370-Delhi.

21. Penalty proceedings entail civil consequences for the assessee. The AO is required to apply his mind to the material particulars, and indicate clearly, as to what is being put against the respondent/assessee when triggering the penalty proceedings.

22. In case the AO concludes, that a case is made out under section 271(1)(c) of the Act, he needs to indicate, clearly, as to which limb of the said provision is attracted. The reason we say so is, that apart from anything else, the pecuniary burden may vary, depending on the infraction(s) committed by the respondent/assessee. In a given case, where concealment has taken place, a heavier burden may be imposed, than in a situation where an assessee is involved in furnishing inaccurate particulars."

23. Therefore, it is necessary for the AO to indicate, broadly, as to the provision/limb under which penalty proceedings are triggered against the assessee.

[Emphasis is Ours]

6. In view of the foregoing, we are not inclined to admit these appeals, as according to us, no substantial question of law arises for our consideration."

9. On perusal of above, we find that the Hon'ble High Court has categorically held that failure to specify the exact limb in the notice issued under section 274 of the Act renders the penalty proceedings unsustainable in law. Respectfully following the ratio laid down by the Hon'ble High Court, we hold that the penalty proceedings in the present case are vitiated due to a defective notice. Further, as regards the objection raised by the Ld. DR relying on the decision of the Hon'ble Bombay High Court in Veena Estate Pvt. Ltd., we have gone through the para nos. 63 to 66 of the said judgements, which is to the following effect:

"63. Even to consider such a plea as raised by the assessee, as a plea of jurisdiction, an anomalous situation is created, in as much as the assessee in a quasi-judicial adjudication without raising any grievance in regard to any defect in the notice acquiesced in the jurisdiction of the Assessing Officer in responding to the notice on all his pleas, in regard to penalty proposed to be imposed on him under section 271(1)(c) of the Income-tax Act. Once having accepted the notice and having participated in the proceedings thereby submitting to the jurisdiction of the Assessing Officer, considering the settled principles of law, the assessee cannot take a position that there is a jurisdictional defect in the Assessing Officer proceeding to adjudicate the penalty-notice, by alleging defect in the notice. Even assuming that defect in the notice has adversely affected the interest of the noticee, the manner in which the interest is adversely affected and/or the nature of the prejudice caused to him, is required to be raised/set out with utmost promptness and/or at the first available opportunity. Certainly, such grievance cannot be raised after long years that is after 23 years, to be a new invention, after the Assessing Officer had decided the issue. The plea of defect in the notice, cannot be an empty plea. Such plea can be accepted only when a demonstrable prejudice, was to be set out by the assessee, which would go to the root of the adjudication. If there is nothing on prejudice being pointed out to the Court except for bald plea of defect in the notice, in our opinion, such plea as made by the assessee cannot be accepted, so as to derail and/or render nugatory, the adjudication proceeding before the Assessing Officer and further adjudication proceeding before the (CIT) and the Tribunal, where the assessee had not even imagined that a plea on the defect in the notice was required to be taken. It is an elementary rule that a litigant cannot be permitted to assume inconsistent positions and to the detriment of the opposite party. If the party has taken up a particular position not only at the early stage of the proceedings but even before the appellate forums, it is not open to a party to appropriate and reprobate and resile from such position. When a question of fact namely whether a prejudice was at all caused, was not raised before the forums below, the parties were estopped from urging it before the appellate forum. Even otherwise and considering the well settled position in law, even a legal right which may accrue to a party can be waived. Such party would be later on

estopped/precluded from raising any question on a breach of a right which stood waived.

64. We are of the opinion that the Full Bench in answering the above questions, however, would not assist the assessee to contend that the settled principles of law as laid down by the Supreme Court in regard to the test of prejudice being made applicable, is inapplicable in the facts of the present case.

65. It is abundantly clear from the principles of law as laid down by the Supreme Court as noted above, that a technical plea of breach of principles of natural justice cannot be taken, unless a case of prejudice has been made out, and if no case of prejudice is made out, certainly a plea of breach of principles of natural justice would be a hollow plea or a plea in futility. This for the reason, that a person complaining of breach of principles of natural justice needs to show that curing such breach, would culminate the proceedings with a different consequence favourable to the assessee. It is only after considering such pleas, it would be a fair decision, rendering justice to the complainant. In our opinion, this would be the logical conclusion of a plea on breach of principles of natural justice and the test of prejudice which is being sought to be applied in dealing with such complaints. The Full Bench does not lay down that the test of prejudice is not attracted when it comes to any complaint of breach of principles of natural justice on issues arising under section 271(1)(c) of the IT Act. The Full Bench also does not consider as to whether at such a belated stage as in the present case, that is after 23 years of after the Assessing Officer had decided the issue, a plea of defect in the notice can be permitted to be raised. The Full Bench only questions the correctness of Kaushalya when it says that the assessment orders would provide sufficient reasons so as to substitute the defective notice. This is not the same as saying that, in the event a notice issued by the Assessing Officer within his jurisdiction having been accepted by the assessee, and/or never complained of, by applying the principles of law as laid down by the Supreme Court, the assessee can get away on technical infringement of natural justice. This would be opposed to the principles of law as laid down by the Supreme Court in Narwar Singh (supra), wherein the Supreme Court has observed that there can never be a technical plea of breach of principles of natural justice and plea would be a realistic plea which can be proved on the principle of prejudice.

66. In the decisions of the Division Bench as referred by the Full Bench, in the facts of each of these cases, it was held that the Assessing Officer failing to tick mark the limb of section 271(1)(c) of the IT Act being attracted, the penalty proceedings stood vitiated however, as observed by the Division Bench in its referral order dated 28 February, 2020 in Mohd. Farhan A. Shaik (supra) in none of these decisions, except in Kaushalya, the test of prejudice was applied."

10. On perusal of above, we find merit in the contention of the Ld. AR that the said decision is clearly distinguishable on facts, as in that case the assessee had raised the objection after an inordinate delay of about 23 years, and that too for the first time before the Hon'ble High Court. In the present case, the assessee had already raised the issue before the Ld. CIT(A), and therefore, it

cannot be said that the objection is being raised for the first time before this Tribunal. Moreover, when the defect goes to the jurisdictional validity of the penalty proceedings, the same can be raised at any stage.

11. In view of the above discussion, we are of the considered opinion that the penalty order passed by the Ld. AO under section 271(1)(c) of the Act, being founded on an invalid notice, cannot be sustained. Accordingly, the penalty order passed by the Ld. AO under section 271(1)(c) of the Act is quashed.

12. In the result, the appeal of the assessee in ITA no. 126/Hyd/2025 for A.Y. 2007-08 is allowed.

ITA No. 127 & 128/Hyd/2025 for A.Ys.2008-09 & 2009-10 :

13. At the outset, the Ld. AR submitted that the facts and issues involved in these two appeals are identical to the facts and issues involved in ITA No.126/Hyd/2025 for Assessment Year 2007–08. Accordingly, it was submitted that the findings of the Tribunal in ITA No.126/Hyd/2025 for Assessment Year 2007–08 can be mutatis mutandis applied to both the present appeals. Further, there was no objection from the Revenue regarding the similarity of facts and issues involved in these two appeals with those involved in ITA No.126/Hyd/2025 for Assessment Year 2007–08. Therefore, in our considered view, the findings and observations recorded by us in ITA No.126/Hyd/2025 for Assessment Year 2007–08 shall mutatis mutandis apply to both the present appeals. We have quashed the penalty order passed by the Ld. AO on the ground that it was founded on an invalid SCN. Accordingly, the penalty orders passed by the Ld. AO in both the present appeals are also quashed on the very same ground, and the appeals filed by the assessee are allowed.

14. In the result, the appeals of the assessee in ITA no. 127 & 128/Hyd/2025 for A.Ys. 2008-09 & 2009-10 are allowed.

15. To sum up, all the three appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 11th February, 2026.

Sd/- **(VIJAY PAL RAO)** **VICE PRESIDENT**	**Sd/-** **(MADHUSUDAN SAWDIA)** **ACCOUNTANT MEMBER**

Hyderabad, dated: 11th February, 2026
Okk, Sr. PS
Copy to:

S.No	Addresses
1	Sunil Kumar Ahuja, H.No.6-3-596/72, 2nd Floor, Naveen Nagar, Erramanjil Colony, Hyderabad, Telangana-500082.
2	Income Tax Officer, Central Circle-1(1), Aayakar Bhavan, Hyderabad, Telangana-500029.
3	Pr. CIT – Central Circle, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order

KAMALA KUMAR ORUGANTI

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Date: 2026.02.12 15:02:34 +05'30'