

आयकर अपीलीय अधिकरण, हैदराबाद पीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
Hyderabad 'A' 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**

आयकर अपीलसं./I.T.A. No.1575/Hyd/2025  
(निर्धारणवर्ष/ Assessment Year: 2015-16)

Dawat E Islami AP, Hyderabad. PAN: AABTD5383Q	VS.	Income Tax Officer, Exemption Ward-1(1), Hyderabad.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri Ankit Chokshi, CA (Hybrid mode)
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Shri Mathivanan S A, Sr. AR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	05/03/2026
घोषणा की तारीख/ Date of Pronouncement	:	11/03/2026

**ORDER**

**PER MADHUSUDAN SAWDIA, A.M.:**

This appeal is filed by Dawat E Islami AP, ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)") dated 25/07/2025 for the A.Y.2015-16.

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

“1. Ld. AO erred in law, initiated penalty proceeding a mechanical manner and assumed improper jurisdiction by not mentioning in the Assessment Order as well as in penalty notice issued on 19-12-2017 as to exactly under which limb of section 271(1)(c) of the Act, i.e. concealment of particulars of income or furnishing of inaccurate particulars of income, the penalty was triggered and initiated. Ld. CIT(A) erred in law in not allowing the said ground of appeal.

2. The satisfaction drawn by the Ld. AO while initiating proceeding u/s 271(1)(c) of the Act in the notice issued on 19-12-2017 is in improper and vague manner which also makes the initiation of the said proceeding invalid and void.

3. The learned Assessing Officer passed an order u/s 271(1)(c) of the IT Act beyond the time limits provided u/s 275 of the IT Act, therefore, the order u/s 271(1)(c) is an invalid order. Ld. CIT(A) erred in not allowing the said ground of appeal.

4. The appellant has not concealed any particulars of income, however, while filing Form No.10A on 30.03.2017, the appellant was of genuine belief that the registration u/s 12AA will be accorded from 01.04.2016, which includes assessment year 2016-17. Therefore, the claim is genuine and no concealment of income/particulars. Therefore, penalty levied may be deleted.

5. Ld. AO erred in levying penalty u/s 271(1)(c) of the Act and the Ld. CIT(A) erred in confirming the same as the appellant has neither concealed the particulars of income nor furnished inaccurate particulars of income.

6. In the facts and circumstances the penalty levied u/s 271(1) (C) is not according to the provisions of the Act therefore, the same may be deleted.

7. The Appellant reserves the right to add, alter, amend and withdraw any of the above grounds of appeal.”

3. The brief facts of the case are that the Learned Assessing Officer (“Ld. AO”) levied penalty of Rs.6,45,172/- under section 271(1)(c) of the Income Tax Act, 1961 (“the Act”) for the Assessment Year 2015–16 vide order dated 24.12.2021. 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 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. The Learned Authorised Representative (“Ld. AR”) submitted that under Ground Nos. 1 and 2, the assessee has challenged the very validity of the penalty proceedings initiated under section 271(1)(c) of the Act. In this regard, the Ld. AR submitted that the notice issued by the Ld. AO under section 274 read with section 271(1)(c) of the Act dated 19.12.2017 is invalid in law as the Ld. AO has failed to specify the exact limb under which the penalty proceedings were initiated. Inviting our attention to the notice issued under section 274 of the Act, extracted at page no. 3 of the paper book, the Ld. AR submitted that the Ld. AO has mentioned that the assessee has “concealed the particulars of income or furnished inaccurate particulars of such income”. It was submitted that both the limbs under section 271(1)(c) of the Act carry different connotations and consequences and therefore the assessee must be made aware of the exact charge so as to enable him to defend himself effectively. It was therefore contended that the non-specification of the exact limb renders the notice issued under section 274 of the Act defective and consequently the penalty order passed pursuant to such defective notice is liable to be quashed. Accordingly, the Ld. AR prayed that the penalty order passed by the Ld. AO and sustained by the Ld. CIT(A) be quashed.

5. Per contra, the Learned Departmental Representative (“Ld. DR”) relied upon the orders of the lower authorities and submitted that the Ld. AO was justified in levying penalty under section 271(1)(c) of the Act, which was rightly confirmed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the material available on record including the case laws relied upon. The issue raised by the assessee is regarding the validity of the penalty proceedings initiated under section 271(1)(c) of the Act on the basis of the notice issued under section 274 of the Act, wherein the Ld. AO has not specified the exact limb of section 271(1)(c) of the Act under which the penalty proceedings were initiated. In this regard, we have gone through the relevant portion of the notice issued under section 274 of the Act, extracted by the assessee at page no. 3 of the paper book, which is to the following effect:

2.1 The relevant extract of the notice issued u/s 271(1)(c) of the Act dated 19-12-2017 wherein the AO had drawn his satisfaction for initiating penalty proceeding under the said section is as under:

"....

Whether in the course of proceedings before me for the assessment year 2015-16 it appears to me that you:-

(a) Have without reasonable cause failed to furnish me return of income which were required to furnish by a notice given U/s 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish U/s 139(1) or by a notice given U/s 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.

(b) Have without reasonable cause failed to comply with notice U/s 22(4)/22(2) of the Indian Income tax Act, 1922 or U/s 142(1)/143(2) of Income tax Act, 1961, No \_\_\_\_\_ dated \_\_\_\_\_

(c) Have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby required to appear before me on 08.01.2018 at 2.30 PM 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 of yourself of this opportunity of being heard in person or through an Authorized Representative, you may show cause in writing on or before the said date, and the same will be considered before any such order is made under section 271.

7. On perusal of above, we find that the Ld. AO has mentioned that the assessee has "concealed the particulars of income or furnished inaccurate particulars of such income" without striking off the irrelevant portion. Thus, the notice does not specify whether the penalty proceedings were initiated for

concealment of income or for furnishing inaccurate particulars of income. We further find that an identical issue has been adjudicated by this Tribunal in para Nos. 8 to 11 of the order in the case of Sunil Kumar Ahuja Vs. ITO, in ITA No. 126/Hyd/2025 dated 11/02/2026, wherein relying on the judgment of the Hon'ble Delhi High Court in the case of PCIT v. Shyam Sunder Jindal, 461 ITR 501, which has been affirmed by the Hon'ble Supreme Court by dismissal of the Revenue's SLP in PCIT v. Shyam Sunder Jindal, [2024] 164 taxmann.com 503 (SC), this Tribunal has held as under :

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]*

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.

8. On perusal of above, we find that this Tribunal has 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. Therefore, respectfully following the aforesaid decision and maintaining judicial consistency, we hold that the notice issued by the Ld. AO under section 274 of the Act without specifying the exact charge is defective and consequently the penalty proceedings initiated under section 271(1)(c) of the Act are not sustainable in law. Accordingly, the penalty order passed by the Ld. AO, which is founded on an invalid notice, cannot be sustained.

9. Since we have allowed the appeal of the assessee on the aforesaid legal ground, we do not consider it necessary to adjudicate the other grounds raised by the assessee and the same are left open.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 11<sup>th</sup> March, 2026.

<b>Sd/- (VIJAY PAL RAO) VICE PRESIDENT</b>	<b>Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 11<sup>th</sup> March, 2026

*Okk, Sr. PS*

Copy to:

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2	ITO, Exemption Ward-1(1), Aayakar Bhavan, Hyderabad, Telangana-500004.
3	Pr. CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*

*Senior Private Secretary,  
ITAT, Hyderabad.*