IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "H" NEW DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No. 5779/Del/2019
निर्धारणवर्ष/Assessment Year: 2015-16

Shri Vinod Oberoi, M-21, Jangpura Extension, New Delhi – 110 014.	**बनाम Vs.**	**Income Tax Officer, Ward : 54 (3), New Delhi.**
PAN : AAAPO2204J		
अपीलार्थी / Appellant		**प्रत्यर्थी / Respondent**

निर्धारितीकीओरसे **/ Assessee by :**	N o n e;
राजस्वकीओरसे **/ Department by :**	Shri M. Baranwal, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	20/09/2022
उद्घोषणाकीतारीख/Pronouncement on :	20/09/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal filed by the assessee is against the order of the ld. Commissioner of Income Tax (Appeals)-18 [hereinafter referred to as CIT (Appeals)] New Delhi, dated 23.05.2019 for the assessment year 2015-16.

2. The assessee In its appeal has raised the following substantive ground of appeal:-

> "1. Penalty notice dated 12 December 2017 and 24 May 2018 are bad in law as these notices does not specify whether the penalty is levied for concealment of income or for concealment of income or for furnishing inaccurate particulars of income.
>
> 2. The order of ld. CIT (A), in reducing the penalty only to 100% i.e. Rs.20,366 [as against 200% i.e. Rs.40,730 levied by the ld. AO u/s 271(1)(c) and not deleting it completely, is bad in law and on facts of the instant case and is liable to be annulled as there was neither any concealment of any particulars of income nor the Appellant has furnished any inaccurate particulars of income.
>
> 3. The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.
>
> 4. The ld. AO and ld. CIT (A) erred in not appreciating the fact that instant case is of bonafide and inadvertent omission which does not mean that the Appellant is guilty of either furnishing inaccurate particulars or is attempting to conceal its income.
>
> 5. The Appellant suo-motu rectified the mistake by voluntarily offering the correct turnover and income for assessment before any show cause notice is issued to the Appellant.

3. In spite of issue of notice none appeared nor any adjournment was sought. We dispose off this appeal on hearing the ld. DR.

4. The assessee in its grounds of appeal contends that the penalty notice issued under section 271(1)(c) is bad in law as the notice does not

specify whether penalty is levied for concealment of income or for furnishing inaccurate particulars of income.

5. Heard ld. DR and perused the orders of the authorities below. On perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act dated 12.12.2017 we observe that the notice issued was stereotyped and the Assessing officer has not specified any limb or charge for which the notice was issued i.e., either for concealment of particulars of income or furnishing of inaccurate particulars of such income. It can be seen from the notice issued u/s 274 read with section 271(1)(c) of the Act, Assessing Officer did not strike off irrelevant limb in the notice specifying the charge for which notice was issued.

6. We observe that an identical issue came up before the Hon'ble Bombay High Court (full bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT [434 ITR (1)] and the Hon'ble High Court held as under:-

> *"Question No.l: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(l)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiate the penalty proceedings?*
>
> *181. It does. The primary burden ties 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(l)(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 Kaushaiya does not lay down the correct proposition of law.

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

184. Indeed, Kaushaiya did discuss the aspect of prejudice. As we have already noted, Kaushaiya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushaiya, "fully knew in detail the exact charge of the Revenue against him". For Kaushaiya, 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 piea 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 doses 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 DUip 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-appiication 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(l)(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[74], in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. Dr. Binapani Dei[75]. 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 statue contravenes the principles of natural justice, it may also be held ultra vires Article 14 of the Constitution.*
>
> *191. As a result, we hold that Dilip N. Shroff treats omnibus show cause notices as betraying non-application of mind and disapproves of the practice, to be particular, of issuing notices in printed form without deleting or striking off the inapplicable parts of that generic notice.*
>
> *Conclusion: We have, thus, answered the reference as required by us; so we direct the Registry to place these two Tax Appeals before the Division Bench concerned for further adjudication."*

7. As could be seen from the above the Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh *v.* ACIT [(2021) 434 ITR 1 (Bom)] while dealing with the issue of non-strike off of the irrelevant part in the notice issued u/s.271(l)(c) of the Act, held that assessee must be informed of the grounds of the penalty proceedings only through statutory notice and an omnibus notice suffers from the vice of vagueness.

8. In the case of PCIT Vs. Sahara India Life Insurance Co. Ltd. [432 ITR 84] the Hon'ble jurisdictional High Court held as under:-

> *" The respondent had challenged the upholding of the penalty imposed under section 271(1)(c) of the Act, which was accepted by the Income Tax Appellate Tribunal. It followed the decision of the Karnataka High Court in CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Karn.) and observed that the notice issued by the Assessing Officer would be bad in law if it did not specify in 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*

furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgement in the subsequent order in CIT Vs. SSA's Emerald Meadows (2016) 73 taxmann.com 241 (Karn.), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by an order dated August 5, 2016 [CIT Vs. SSA's Emerald Meadows (2016) 386 ITR (St.) 13 (SC)]."

9. As could be seen from the above the Hon'ble jurisdictional High Court upheld the order of the Tribunal in holding that the notice issued by the Assessing Officer was bad in law if it did not specify under which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income.

10. Ratio of the full bench decision of the Hon'ble Bombay High Court (Goa) squarely applies to the facts of the assessee's case as the notice u/s. 274 r.w.s. 271(l)(c) of the Act was issued without striking off the irrelevant portion of the limb and failed to intimate the assessee the relevant limb and charge for which the notices were issued. Thus, respectfully following the said decision we hold that the penalty notice issued u/s. 271(l)(c) of the Act by the Assessing Officer is bad in law and accordingly the penalty order passed u/s. 271(l)(c) of the Act for Assessment Year 2008-09 is quashed.

11. Even on merits penalty under section 271(1)(c) of the Act is not leviable since the addition made by the Assessing Officer is on account of ad-hoc estimation of net profit @ 8% on the un-reconciled turnover as per books and as per Form 26AS and the addition is only of Rs.98,863/-. Additions made on ad-hoc basis on estimation does not attract penalty under section 271(1)(c) of the Act as there is no conclusive proof of concealment of income or furnishing of inaccurate

particulars of income. Therefore, even on merits penalty is liable to be deleted.

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

Order pronounced in the open court on : 20**/09/2022.**

Sd/-	**Sd/-**
(G. S. PANNU)	**(C. N. PRASAD)**
PRESIDENT	**JUDICIAL MEMBER**

Dated : 20/09/2022.

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	20.09.2022
Date on which the typed draft is placed before the dictating member	20.09.2022
Date on which the typed draft is placed before the other member	20.09.2022
Date on which the approved draft comes to the Sr. PS/ PS	20.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	20.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	20.09.2022
Date on which the final order is uploaded on the website of ITAT	20.09.2022
Date on which the file goes to the Bench Clerk	20.09.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	