

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “D”, MUMBAI****BEFORE AMIT SHUKLA (JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)****I.T.A. No.684/Mum/2023  
(Assessment year 2013-14)**

Right Tight Fastners Pvt Ltd Office No.112, Bhaveshwar Arcade Annexe, Near Shreyas Cinema Ghatkopar (West), Mumbai-400 086	Vs	Deputy Commissioner of Income Tax-11(1)(1), Mumbai 204, Aayakar Bhavan, 2 <sup>nd</sup> Floor, M.K. Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Shashank Mehta
Department represented by	Shri Manoj Kumar Singh, Sr.AR

Date of hearing	16-05-2023
Date of pronouncement	19-05-2023

**ORDER****PER : MS PADMAVATHY S. (AM)**

This appeal is against the order of Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) [hereinafter ‘Ld.CIT(A)’ ] dated 24/01/2023 for the assessment year 2013-14. The assessee raised the following grounds of appeal:-

*“1. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the penalty levied under section 271(l)(c) without considering the fact that while issuing SCN u/s 271(l)(c) r.w.s 274, the Ld. Assessing Officer has not specified the charge for initiating the penalty proceedings u/s 271(l)(c) thereby violating the law laid down by the Hon'ble*

*Bombay High Court in the case of Mohd. Farhan A. Shaikh vs. DCIT [Tax Appeal Nos. 51 & 57] of 2012 [Bombay HC]*

2. *In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in passing the impugned order dated 24.01.2023 ex-parte in gross violation of principles of Natural Justice and without adjudication the levy of penalty on merits.*

3. *In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the penalty of Rs. 1,10,40,519/- levied under section 271(l)(c) of the Act.”*

2. The assessee is a company engaged in the business of manufacturing and selling of all types of precision nuts, bolts, washer, hinges and industrial / domestic fasteners. The assessee filed the return of income for A.Y. 2013-14 on 05/10/2013 declaring total income of Rs.4,83,69,480/- under normal provisions of the Income-tax Act, 1961 (in short, ‘the Act’ ) and Rs.6,39,12,923/- under section 115JB. The assessee, while arriving at the total income under the normal provisions of the Act had claimed a deduction under section 80IC for Rs.4,79,40,278/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer accepted the income returned under the normal provisions of the Act. The Assessing Officer, while going through the computation of MAT under section 115JB of the Act noticed that while computing the book profits, the assessee has reduced the profit after tax as shown in the P&L Account by the amount claimed as deduction under section 80IC. The Assessing Officer held that such adjustment is not permissible as per the provisions of section 115JB of the Act and accordingly added the amount to the book profits computed under section 115JB.

3. The Assessing Officer subsequently issued a notice initiating penalty proceedings under section 271(1)(c) of the Act for the reason that by claiming a

deduction under section 80IC against the books profits, that is, by making an inadmissible claim, the assessee has not only concealed income but has filed inaccurate particulars of income. The assessee submitted before the Assessing Officer that assessee was under impression that its profit from the industrial unit in the backward area of Pantnagar, Uttarakhand was exempt not liable to included in the computation of book profits under MAT provision. Further, it has stated that this bonafide belief was based on the calculations of the book profit made by the Auditor in his report in Form 29B. It is also stated that none of the directors of the company is an expert in the field of taxation and therefore cannot be expected to know the niceties of technical provisions of taxations under sec.115JB. Further, none of the fact it has either concealed or any inaccurate particulars have been furnished with respect to such deduction u/s 80IC. Therefore, the allegation regarding concealment of income or furnishing of inaccurate particulars cannot arise. The Assessing Officer did not accept the submissions of the assessee and proceed to levy penalty by stating that it is the responsibility of the directors of the assessee company to see the genuineness and accuracy of the claim of any deduction / exemption while calculating the income under the normal provisions and also under the book profits.

4. Aggrieved, the assessee filed appeal before the CIT(A). The Ld.CIT(A) dismissed the appeal exparte for the reason that the assessee did not respond to various notices issued during the course of appellate proceedings. Considering the facts on record and the grounds of appeal, the CIT(A) confirmed the levy of penalty by holding that –

*“5. In the instance of the case the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in*

*this regard. I have gone through the record before me and based on \ the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly assessed that the assessee has furnished inaccurate particulars leading to concealment of income , and rendering his liable for penalty of Rs. 1,10,40,519/- u/s 271(1)(c) of the Income Tax Act, 1961. Since the appellant failed to substantiate appellant's claim and the addition made by the Assessing Officer of Rs. 1,10,40,519/-is hereby confirmed.”*

5. During the course of hearing, the Ld.AR presented arguments to submit that the CIT(A) passed an exparte order without giving an opportunity of being heard which is against the principles of natural justice. The Ld.AR also presented arguments to submit that the assessee was under a bona fide believe that the deduction under section 80IC is an allowable deduction while computing the book profits since the same is certified by the Chartered Accountant of the assessee in Form 29B. In this regard, the Ld.AR relied on the decision of the Supreme Court in the case of Price Water House Coopers Pvt Ltd vs CIT (2012) 25 taxmann.com 400 (SC). Ld.AR also contended the levy of penalty on the legal ground that the showcause notice issued under section 274 r.w.s. 271(1)(c) is issued without mentioning the specific charge for which penalty was being proposed to be levied.

6. For the purpose of adjudication we will first consider the legal contention raised by the Id AR. The Ld.AR in this regard submitted that the Assessing Officer while issuing the show cause notice has not brought to the notice of the assessee as to what is the charge for which the penalty was proposed to be levied. The Ld.AR drew our attention in this regard to the show cause notice (page 14 of the paper book) where the irrelevant clause was not struck off. The Ld.AR submitted that it is a well accepted proposition that out of the two limbs of section 271(1)(c), the Assessing Officer has to strike off the irrelevant clause since they carry different

meaning. The Ld.AR in this regard relied on the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) wherein it has been observed that the levy of penalty has to be clear with the limb under which it has been levied informing the accused of the charge levied on him is the prerequisite of any proceedings and such charge has to be specified in the beginning itself. The Ld.AR further submitted that in assessee's case the showcause notice does not specify the specific charge as regards to the concealment of particulars of income by furnishing of inaccurate particulars of income and, therefore, the penalty levied is bad in law. The Ld.AR further relied on various decision of the co-ordinate bench and also the decision of the jurisdictional High Court in the case of Mohd Farhan A Shaikh vs DCIT (2021) 125 taxman.com 253 (Bom).

7. The Id DR on the other hand submitted that the assessee failed to appear before the CIT(A) and did not raise the relied on the order of the lower authorities.

8. We heard the parties and perused the materials on record. Before proceeding further, let us look into the provisions of section 271(1)(c) of the Act.

*“271. (1) If the Assessing Officer or the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—*

*(a) \*\*\*\*\**

*(b) \*\*\*\*\**

*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income*

*he may direct that such person shall pay by way of penalty,—\*\*\*\**

9. From the plain reading of the section it is clear that the penalty is leviable in case where there is concealment of particulars of income or furnishing of inaccurate particulars of income. Perusal of the show cause notice issued under section 274 read with section 271(1)(c) which is extracted above, it is noticed that the Assessing Officer has not struck off the irrelevant portion as to whether the charge against the assessee is concealing particulars of income or furnishing of inaccurate particulars of income. The extract of the show cause notice is given below -

आयकर अधिनियम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन सूचना  
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF  
THE INCOME TAX ACT, 1961

PAN AADCR3024M

सेवा में /  
To  
M/ S Right Tight Fastners Pvt Ltd.  
18-A/31, Manish Kaveri,  
Off J.P. Road, Four Bungalow,  
Andheri (E), Mumbai-400 053.

आयकर कार्यालय/Office of the  
Asst. Commissioner of Income  
Tax, Circle- 11(1)(1), Mumbai  
Room No.201, Aayakar Bhavan,  
M.K. Road, Mumbai-400020.

तारीख/Dated : 23.03.2016

चूंकि कर निर्धारण वर्ष ..... के संबंध में मेरे यहां होने वाली कार्रवाई के दौरान मुझे पता चलता है कि आपने

you:-

Whereas in the course of proceedings before me for the **Assessment Year 2013-14** it appears to me that

you:-

\* बिना उचित कारण के वह आय विवरण नहीं दी है जो आपको भारतीय आयकर अधिनियम, 1922 की 22(1), 22(2)/ 34 के अधीन दी गई सूचना के अनुसार देनी थी या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961 की धारा 139(2)/148 के अधीन दी गई सूचना सं. .... ता. .... अनुसार दाखिल करनी थी। अथवा उचित कारण के बिना आपने दिए गए समय के अन्दर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अपेक्षित नीति से विवरण नहीं दी है।

\* Have without reasonable cause failed to furnish me return of income which you were required to furnish 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.

\* बिना उचित कारण के आपने भारतीय आयकर अधिनियम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना सं. .... ता. .... का अनुपालन नहीं किया है।

\* 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 .....

\* I have concealed the particulars of your income or ..... इस प्रकार की आम के रूप में गलत दिए हैं।

\* I have furnished inaccurate particulars of such income. आपने एल द्वारा सूचित किया जाता है कि ता. .... 200 ... के बड़े अ.म./प.म. में आप मेरे कार्यालय में उपस्थित हो और कारण बताएं के आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर दण्ड लगाने का आदेश नहीं दिया जाए। यदि आप स्वयं उपस्थित होकर या प्रधिकृत प्रतिनिधि द्वारा सुनवाई के लिए दिए गए अवसर का लाभ नहीं उठाना चाहते तो उक्त तारीख को या उससे पूर्व लिखकर इसका कारण बताएं, जिस पर धारा 271 के अधीन कोई ऐसा आदेश देने से पूर्व विचार किया जाएगा।

You are hereby requested to appear before me at **11.30 A.M. on 12.04.2016** 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(1)(c).

(गोहर)  
Seal



*Lalit Kumar*  
(LALIT KUMAR)  
Asst. Commissioner of Income Tax,  
Circle-11(1) (1), Mumbai

\* जो शब्द या पद अनवश्यक हैं उन्हें काट दीजिए Delete in appropriate words and Paragraphs.

10. We notice that the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (supra) has held that the notice under section 274 r.w.. 271 should specifically state as to whether penalty is being proposed to be imposed for concealment of particulars of income or for furnishing

of inaccurate particulars of income. The Hon' ble High Court further laid down that certain printed form where all the grounds given in section 271 are given would not satisfy the requirement of law. The Court further held that initiating penalty proceedings on one limb and find the assessee guilty on another limb of section 271(1)(c) of the Act is not tenable. We also notice that the Full Bench of the Hon' ble Bombay High Court in the case of Mohd. Farhan A. sheikh vs DCIT (supra) has considered the similar issue and held that -

*“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(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 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(l)(c), read with Section 274 of the 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."*

11. Thus the ratio laid down in the above decision of the full bench is that if the show cause notice suffers from the vice of vagueness the same would vitiate such notice. In assessee's case from the perusal of the show cause notice it is not clear as to whether there was concealment of particulars of income or that the Assessee had furnished inaccurate particulars of income. We therefore find that issuance of such show cause notice without specifying as to whether the Assessee had concealed particulars of his income or had furnished inaccurate particulars of the same has resulted in vitiating the show cause notice. Considering the facts of the present case and relying on the ratio laid down by the Full Bench decision of the Hon' ble Bombay High Court and Hon' ble Karnataka High Court, we hold that the notice issued by the Assessing Officer under section 271(1)(c) without striking off the irrelevant clause is not valid and accordingly, the penalty levied is deleted.

12. Since we have adjudicated the issue in favour of the assessee on the legal contentions on the validity of the show cause notice u/s.274 r.w.s 271(1)(c), the other arguments presented by the Ld AR have become academic and hence not warranting adjudication.

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

**Order pronounced in the open court on 19/05/2023.**

**Sd/-**

**sd/-**

<b>(AMIT SHUKLA)</b>	<b>(PADMAVATHY S)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 19<sup>th</sup> May, 2023

Pavanan



**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary  
**ITAT, Mumbai**