

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A Nos.2515 & 2516/Del/2023

निर्धारणवर्ष/Assessment Years:2011-12 & 2015-16

Distt. Cooperative Bank Ltd., C/o Kashyap & Co., 114, Citi Centre, B.B. Road, Meerut, Uttar Pradesh.	बनाम Vs.	ACIT Circle, Wahid Nagar, Station Road, Najibabad, Bijnor, Uttar Pradesh.
PAN No.AABFD2205R		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri P.S. Kashyap, CA
Revenue by	Ms. Amanpreet Kaur Walia, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.11.2023
उद्घोषणाकीतारीख/Pronouncement on	31.01.2024

आदेश /O R D E R

These two appeals are filed by the Assessee against the different orders of Ld.CIT(Appeals) for the assessment years 2011-12 & 2015-16 in sustaining the penalty levied u/s 271(1)(c) of the Act.

2. In so far as the appeal for the assessment years 2011-12 & 2015-16 are concerned the assessee challenged the very issue of notice and validity of order passed u/s 271(1)(c) of the Act on the ground that Assessing Officer did not specify the limb under which

he intended to initiate the penalty proceedings, whether the penalty proceedings are initiated on account of concealment of income or on account of furnishing inaccurate particulars of income.

3. Ld. Counsel for the assessee referring to notice u/s 271(1)(c) of the Act dated 30.03.2014 submits that the AO did not specify the limb for which the penalty proceedings were initiated. Placing reliance on the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Company Ltd. [432 ITR 84], the Ld. Counsel submits that if the AO did not specify the limb for which the show cause notice was issued for levy of penalty, the penalty notice is bad in law and consequently, the penalty order is bad in law. Reliance was also placed on the decision of Madras High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory [359 ITR 565] (Karnataka).

4. Ld. DR strongly supported the orders of the authorities below.

5. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. On perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act it is noticed that the AO did not strike off the irrelevant limb in the notice. In other words, the AO did not specify the limb for which the notice u/s

271(1)(c) was issued i.e. either for concealment of income or for furnishing inaccurate particulars of income. The notice was issued mechanically stating that the assessee had concealed particulars of income or furnished inaccurate particulars of income.

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.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 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(1)(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 plea 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". Kaushaiya does 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 Kaushaiya. 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 Dilip 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-application 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(1)(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 virus 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(1)(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 82 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(1)(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 order passed u/s. 271(1)(c) of the Act by the Assessing Officer is bad in law and accordingly the penalty order passed u/s 271(1)(c) of the Act for Assessment Year 2011-12 is quashed.

11. As we have decided the preliminary and legal ground in favour of the assessee by quashing the penalty order the other grounds raised by the assessee on merits are not gone into as the adjudication of these grounds become only academic at this stage.

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

13. Coming to the appeal for the AY 2015-16, facts are identical. The decision taken for the AY 2011-12 applies *mutatis-mutandis*.

14. In the result, both the appeals of the assessee are allowed as indicated above.

Order pronounced in the open court on 31/01/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 31/01/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi