

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “B”, PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2483/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2012-13

Mr. Vikas Jayram Bhukan, Survey No.34, House No.80, Azad Chowk, Opposite Ramma, Lohegaon, Near Gram Panchayat, Pune- 411047. PAN : ALQPB0811K	Vs.	ITO, Ward-12(3), Pune.
Appellant		Respondent

Assessee by : Shri Bhuvanesh Kankani  
Revenue by : Shri Kumar Manish Singha  
  
Date of hearing : 08.04.2025  
Date of pronouncement : 30.05.2025

आदेश / ORDER

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 03.09.2024 passed by Ld. CIT(A)/NFAC for the assessment year 2012-13.

2. The appellant has raised the following grounds of appeal :-

- “1. On the facts and circumstance prevailing in the case and as per provisions and scheme of the Act it be held that the notice for levy of penalty was defective since no specific charge of violation, was made out in the notice and thus the consequent penalty so levied be kindly deleted.

2. *On the facts and circumstances of the case and as per provisions of the Income-tax Act, 1961 ('the Act') it be kindly held that the penalty so levied u/s 271(1)(c) is not in accordance with the provisions of the act. Accordingly, the penalty so levied be kindly deleted.*
3. *On the facts and circumstances of the case and as per provisions of the Income-tax Act, 1961 ('the Act') it be kindly held that the quantum addition so made is incorrect and accordingly the penalty proceedings so emanating from an incorrect addition also deserves to be deleted.*
4. *The appellant craves leave to add, amend, vary and/or withdraw any or all the above grounds of appeal."*

3. Facts of the case, in brief, are that the assessee is an individual having income from business of trading of land and real estate and has furnished his return of income on 29.09.2012 declaring total income of Rs.9,49,160/-. During the course of assessment proceedings, the Assessing Officer found that the assessee has disclosed sales summary of Rs.86,03,600/-, however the assessee has received Rs.1,29,58,000/-. On an enquiry the assessee replied that the excess amount of Rs.43,51,400/- is repayable to the partners and it is not the part of income. The Assessing Officer asked to produce the return of partnership firm wherein the excess amount has been shown as receivable by the firm. The assessee replied that there is no partnership firm and it is a group of 8 to 10 members who purchase land jointly and after selling the same distribute their profit in proportion of their investment. The Assessing Officer asked to justify the share of profit of the assessee but no reply was

filed and accordingly the assessment was completed by determining total income at Rs.53,00,560/- as against the income returned by the assessee at Rs.9,41,160/-. The above assessed income includes unexplained income of Rs.43,51,400/-. The Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the IT Act for furnishing of inaccurate particulars and concealment of income. Subsequently, by an order dated 23.09.2015 the Assessing Officer imposed penalty u/s 271(1)(c) of the IT Act of Rs.13,44,580/-.

4. In first appeal, after considering the reply of the assessee, Ld. CIT(A)/NFAC dismissed the appeal filed by the assessee by observing as under :-

*“5.1 The grounds of appeal and submissions filed have been perused. All the grounds are taken together for adjudication of this appeal. In the response filed to the notices issued, the appellant has submitted that the notice for initiation of penalty u/s 271(1)(c) read with section 274 of the I.T.Act, 1961 is ambiguous and vague because in the notice both furnishing of inaccurate particulars of income as well as concealment of income have been mentioned. In this regard, the appellant has mentioned various case laws which has been perused. Recently, the Hon'ble High Court of Calcutta in IT Appeal No. 66 of 2018 May 2, 2024, [2024] 163 taxmann.com 449 (Calcutta) in the case of Principal Commissioner of Income-tax v. Thakur Prasad Sao & Sons (P.) Ltd observed that:*

*"From perusal of the assessment orders for both the assessment years, i.e., 2006-07 and 2007-08 it is evident that the Assessing Officer has specifically noted concealment of particulars of income and the income so concealed was admitted by the respondent/ assessee as he was having no explanation. The concealment was supported by documentary evidences. The specific amount of undisclosed income was added in the income disclosed by the assessee in his returns. The penalty proceedings itself was initiated by the Assessing Officer while passing the assessment order. The issuance of notice under section 274 was in fact, a consequence of the initiation of penalty proceedings by*

*the Assessing Officer during the course of assessment proceedings. [Para 24] As observed by the Supreme court in Mak Data Private Limited (supra), the law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty. The Assessing Officer has to satisfy only whether the penalty proceeding is to be initiated or not during the course of assessment proceedings. He is not required to record his satisfaction in a particular manner or to reduce it in writing. In the instant case, the Assessing Officer had recorded his satisfaction in the assessment order and initiated penalty proceedings under section 271(1)(c) concealment of particulars of income by the respondent assessee. He also directed for issuance of notice. The issuance of notice under section 274 was merely a consequence of the penalty proceeding initiated by the Assessing Officer during the course of assessment proceedings. The assessee was well aware of the fact of concealment of particulars of income by him, which was well discussed in both the assessment orders by the Assessing Officer. (Para27] Section 271(1B) as afore-quoted was inserted by Finance Act, 2008 (18 of 2008) with retrospective effect from 1-4-1989, which specifically provides that where any amount is added or disallowed in computing the total income or loss of the assessee in any order of assessment or reassessment of the and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceeding under the said clause (c). In the present set of facts the Assessing Officer has noted in the assessment order the concealment of particulars of income by the respondent/assessee. Notices were also directed to be issued as has been observed in the assessment orders. Once, in the assessment order the Assessing Officer has mentioned concealment of particulars of income by the assessee, the notice under section 274 is merely consequential. The respondent/assessee was well aware of the grounds of concealment of income recorded in the assessment order which he admitted. Section 274 prohibits imposition of penalty unless the assessee has been heard or has been given a reasonable opportunity of being heard. It is admitted fact of the case that the respondent/assessee was heard by the Assessing Officer who passed the penalty order. The submissions made by the respondent/assessee before the Assessing Officer in penalty proceedings, have been noted by the Assessing Officer. Thus, it is undisputed that the assessee has been heard. The assessee relied upon judgment in Manjunatha Cotton and Ginning Factory (supra) to contend that 'Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c). In the instant notice under Section 274 for penalty under section 271(1)(c) of the Act, 1961 was issued by the*

*Assessing Officer to the respondent assessee to afford him opportunity of hearing for concealment of particulars of income. Details of undisclosed/concealed income have been well mentioned in the assessment order of the respondent assessee and being well aware of it, the respondent assessee made specific submission in penalty proceedings. Thus, essential requirements of section 271(1)(c) read with section 274 have been complied with. [Para 38] When the Assessing Officer had recorded in the assessment order the particulars of concealed income/undisclosed income of the assessee and on that basis-initiated penalty proceeding under section 271(1)(c) then consequential notice under section 274 issued by Assessing Officer to the assessee to afford him opportunity of hearing, was specifically a notice for penalty for concealment of particulars of income/undisclosed income. Such a notice complied with the principles of natural justice and was a valid notice under section 274. In Manjunatha Cotton and Ginning Factory (supra) heavily relied by learned counsel for the respondent assessee, Karnataka High Court held that "Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c)" and "the assessee should know the grounds which he has to meet specifically". We find that in the present set of facts, notice under Section 274 for penalty under Section 271(1)(c) of the Act, 1961 was issued by the Assessing Officer to the respondent assessee to afford him opportunity of hearing for concealment of particulars of income. Details of un-disclosed/concealed income have been well mentioned in the Assessment Order of the respondent assessee and being well aware of it, the respondent assessee made specific submission in penalty proceedings which we have reproduced above. Thus, essential requirements of Section 271(1)(c) read with Section 274 have been complied with.*

*Law in this regard has been well explained by Hon'ble Supreme Court in D. M. Manasri (supra) and Mak Data Pvt. Ltd. (supra) which are binding precedent. Any observation in the above noted Karnataka High Court judgment contrary to the judgments of Hon'ble Supreme Court, is not a good law. Hon'ble Supreme Court in CIT v. SSA's Emerald Meadows (2016) 73 taxmann.com 248 dismissed the SLP in limine....*

*The facts of the instant case are identical to the facts of the case law discussed above. In view of the discussion above, it is clear that the notice issued u/s 271(1)(c) of the Act is valid.*

*5.3. During the appellate proceedings, the appellant had requested for a personal hearing which was held on 5/6/2024. The appellant had claimed that the amount of Rs.43,51,400/-included the amounts which were due to be returned to the persons who had purchased land along with him. During the video conference, the representative of the appellant was asked to furnish the copy of bank statements for transfer of funds to others, proof for transfer of funds, whether the other*



*recipients have filed their tax returns etc. The appellant has furnished certain details like return of income of 2 persons, bank statements, sundry creditors to whom payments have been made etc. But these do not clearly prove that the appellant has made the payment to the persons concerned mentioned in the statement of facts. Further, it is also noticed that the appellant has accepted the addition made of Rs.43,51,400/-, by the AO and has not appealed against it, thus, accepting the decision of the AO. In the absence of conclusive evidence, the addition made by the AO is upheld. The appellant fails on this ground.*

*6.0 In effect, the appeal of the appellant is Dismissed.”*

5. It is this order against which the assessee is in appeal before this Tribunal.

6. Ld. AR appearing from the side of the assessee submitted before us that the order passed by Ld. CIT(A)/NFAC is unjustified. Ld. AR further submitted that the notice issued u/s 274 r.w.s. 271(1(c) of the IT Act was defective since it does not specify the specific charge or violation of particular limb for which the penalty was required to be imposed. In support of this contention, copy of penalty notice issued by the Assessing Officer is produced before the bench. Ld. AR submitted before the bench that under the identical facts and similar circumstances Hon'ble Bombay High Court in the case of PCIT vs. Times Global Broadcasting Ltd., Income Tax appeal No.1943 of 2018 order dated 27.02.2025 has dismissed the Revenue's appeal by following the full bench decision passed in the case of Mohammed Farhan vs. DCIT [2021] 125 Taxmann.com 253 (Bombay). Accordingly, Ld. AR submitted

before the bench that the issue is covered by Hon'ble Jurisdictional High Court judgement passed in the case of DCIT vs. Times Global Broadcasting Ltd. order dated 27.02.2025 supra and prayed to delete the penalty imposed under section 271(1)(c) of the IT Act on the ground of in correct notice.

7. Ld. DR appearing from the side of the Revenue relied on the orders passed by subordinate authorities and requested to confirm the same.

8. We have heard Ld. counsels from both the sides and perused the material available on record including the copy of notice issued u/s 274 r.w.s. 271(1)(c) of the IT Act and also the copy of judgement passed by Hon'ble Bombay High Court in the case of Times Global Broadcasting Ltd. (supra) wherein under the identical facts & in similar circumstances the appeal filed by the revenue was dismissed by observing as under

*“4. Mr. Shah, learned Senior Advocate for the Respondent, submits that issue raised is now endorsed by the Full Bench of this Court in the case of Mohd. Farhan A. Shaikh Vs. Deputy Commissioner of Income Tax, Central Circle I, Belgaum<sup>1</sup>.*

*5. We have perused the impugned order and find that, in this case, the notice issued to the Assessee did not clarify whether the penalty was proposed to be imposed on the grounds of concealment or furnishing inaccurate particulars. The necessary box containing the two options was not ticked. Thus, the Assessee had no clear notice about the case it was required to meet.*

*6. Precisely, in the above context, the Full Bench has made the following observations in paragraph Nos. 180 to 183 of its decision. These observations read as follows: -*

*"....180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may not contain reasons for the penalty proceedings. The other course of action is the prevention of defect in the notice-and that prevention takes just a tick mark. Prudence demands prevention is better than cure.*

*Answers:*

*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 (1) (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(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 Kaushalya does not lay down the correct proposition of law....."*

*7. Thus, we are satisfied that the questions now proposed, stand answered against the Revenue, inter alia by the Full Bench of this Court in the case of Mohd. Farhan (supra).*

*8. For the above reasons, we decline to admit this appeal on the questions proposed.*

*9. The Appeal is dismissed.*

*10. No costs."*

9. In this regard, we find that the above judgement passed by

Hon'ble Bombay High Court is squarely applicable to the facts of



the case and Ld. DR could not bring any other order in favour of Revenue passed by Hon'ble jurisdictional High Court. Therefore respectfully following the above judgement passed by Hon'ble Bombay High Court in the case of DCIT vs. Times Global Broadcasting Ltd., Income Tax Appeal No.1943 of 2018 order dated 27.02.2025, we direct the Assessing Officer to delete the penalty of Rs.13,44,580/- imposed u/s 271(1)(c) of the IT Act. Thus, the grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 30<sup>th</sup> day of May, 2025.

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(VINAY BHAMORE)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> May, 2025.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.