

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2047/MUM/2025
Assessment Year: 2015-16**

Moraj Group Hospitalities INC Plot No. 57, Sector 17, Koperkhairne, Navi Mumbai – 400709 (PAN : AASFM1669B)	Vs.	Central Circle 5(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri. Pradip Kapasi, CA
Revenue : Shri. Annavarani Kosuri, Sr. DR

Date of Hearing : 23.07.2025
Date of Pronouncement : 31.07.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-53, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1074297516(1), dated 10.03.2025 passed against the penalty order by Central Circle 5(2) Mumbai, u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 03.03.2022 for Assessment Year 2015-16.

2. Grounds taken by the assessee are reproduced as under:

“GROUND NO. 1: LEVY OF PENALTY U/S 271(1) (C) OF RS. 24,72,000

(a) The Id. CIT(A) erred in law and on facts in confirming the order of levying penalty of Rs. 24,72,000 u/s. 271(1)(c) of the Income Tax Act, 1961 @ 100% when there had been no concealment of clin income and appellant had furnished accurate particulars of income, by simply relying on the finding in the assessment order

(b) The Id. CIT(A) erred in law and on facts in confirming the penalty order passed by AO without identifying one of the two offences for which he proposed to levy penalty and informing the same to your appellant for responding to the same and further erred in confirming the order of penalty passed once again by not identifying one of the two offences and instead levying penalty for allegedly concealing the particulars of income by furnishing inaccurate particulars of income,

(c) And further the Id. CIT(A) erred in law and in upholding the vague order of the AO without identifying the one of the two offences where AO in the following words has levied penalty "In view of furnishing inaccurate particulars and concealment of income, penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 were initiated in the assessment order".

(d) The Id. CIT(A) erred in law and on facts in confirming the initiation of penalty by Id. AO without recording his satisfaction in the assessment order or in notice that the facts recorded in assessment satisfied him to initiate penalty proceedings.

(e) The Id. CIT(A) further erred in law in solely relying on the order of the AO and the ITAT without applying his mind at all also in ignoring the fact that the appellant has contested the orders in the High Court.

Denial of Opportunity of Hearing

The Id. CIT(A) erred in law in denying/ not affording any opportunity of hearing to your appellant to present the case on merits as to why penalty be not levied.

i. levying the penalty without giving any opportunity to your appellant to present the case on merits as to why penalty be not levied,

ii. levying penalty even after knowing fully that the appellant was aggrieved by the wrongful addition, and that the said addition is disputed in an appeal before the Hon'ble ITAT.

GROUND NO. 2: SERIOUS VIOLATION OF NATURAL JUSTICE AND OF S.274 AND S. 275

(a) The CIT(A) has erred in law and on facts in dismissing the appeal without affording an opportunity to your appellant of hearing and further erred in law in confirming an order passed by Id. AO. The Id. AO. Erred in law in passing an order of penalty in gross violation of the provisions of natural justice on various counts".

3. The only issue raised is in respect of imposition of penalty u/s.271(1)(c). In ground – (b), assessee has contested that penalty order has been passed without identifying one of the two charges for which penalty was proposed to be levied. According to the assessee, the charge for imposition of penalty is not specific and is therefore vitiated for passing an order to impose penalty.

4. Facts of the case are that assessee is a partnership firm. It filed its return of income on 06.10.2015 reporting total income at nil. Income of the assessee was assessed at Rs.80 lakhs vide assessment order passed u/s.143(3) r.w.s. 147 dated 26.12.2017. Addition was made on account of loan taken by the assessee from Dhanvi Corporation. While passing the said order, in para-5.3, ld. Assessing Officer after making the addition noted that penalty proceedings u/s. 271(1)(c) are separately *initiated for filing/furnishing inaccurate particulars of income*. Similar noting was made in para-7 for issuing penalty notice u/s. 274 r.w.s. 271(1)(c).

4.1. While issuing notice u/s. 274 r.w.s. 271(1)(c) dated 26.12.2017, the charge mentioned by the ld. Assessing Officer is stated to be as *“Have concealed the particulars of income and furnished inaccurate particulars/details”*. Another notice was issued u/s.274 r.w.s. 271(1)(c), dated 11.02.2022 wherein again it was noted that *“you have concealed the particulars of income and furnished inaccurate particular of such income”*.

4.2. In the impugned penalty order dated 03.03.2022, while concluding to impose penalty in para-5, ld. Assessing Officer noted that the default of the assessee has elements of furnishing inaccurate

particulars and concealment of income. Similarly, in para-6(4), he noted that assessee has deliberately concealed its taxable income by making inaccurate claim. Thus, a penalty was imposed of Rs.24,72,000/- at the rate of 100% of tax sought to be evaded.

5. Assessee contended that penalty proceedings u/s.271(1)(c) were initiated for the charge of furnishing of inaccurate particulars, however, later were culminated into levy of penalty on both the charge which were mentioned in the two notices also, though penalty can be initiated for either of the charge, i.e., for furnishing of inaccurate particulars of income or concealment of particulars of income. According to the assessee, notices issued using word “and” in place of “or” are bad in law. Using “and” for invoking the proceedings in a penalty notice u/s.271(1)(c) is not in accordance with the provisions of the law which explicitly uses “or” to denote two separate charges. He placed reliance on the decision of Hon'ble High Court of Gujarat in the case of New Sorathia Engineering vs. CIT in 155 taxman 513 (Guj) wherein it was held as under:

“In paragraph 11, page 2 and 3, it was held that in the case of CIT v. Manu Engg. Works [1980] 122 ITR 306, this is what is laid down by this court:

"We find from the order of the Inspecting Assistant Commissioner, in the penalty proceedings, that is, the final conclusion as expressed in para4 of the order I am of the opinion that it will have to be said that the assessee had concealed its income and/or that it had furnished inaccurate particulars of such income Now, the language of 'and/or may be proper in issuing a notice as to penalty order or framing of charge in a criminal case or a quasi-criminal case, but it was incumbent upon the Inspecting Assistant Commissioner to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by the assessee. No such clear-cut finding was reached by the Inspecting Assistant Commissioner and, on that ground alone, the order of penalty passed by the Inspecting Assistant Commissioner was liable to be struck down." (p. 310)

5.1. He further referred to the decision of Coordinate Bench of ITAT, Ahmedabad in the case of N. Suseelan vs. ACIT in ITA No.2389/AHD/2006, dated 19.03.2009 wherein in para-6 page 8, it was held that:-

"In paragraph 6, page 8, it was held that, the word "and" used in the order levied penalty clearly indicates that the AO could not clearly specify that assessee was guilty of either concealment of income or of furnishing of inaccurate particulars of income

The Tribunal had imposed penalty stating:

"The assessee had concealed the particulars of his income and also furnished inaccurate particulars of such income."

The Gujarat HC struck down the penalty, holding that the AO did not make a positive finding whether it was concealment or inaccurate particulars. Using "AND" indicated confusion and non-application of mind, rendering the penalty order bad in law."

5.2. Further, ld. Counsel pointed out that there was only one addition and hence the ld. Assessing Officer could not have used the word "and" while imposing penalty to bring the assessee under two charges.

6. In a recent order by the Coordinate Bench of ITAT Mumbai in the case of Ritu Multitrade Service Pvt. Ltd. in ITA No.938/Mum/2024 dated 28.06.2024 (where the undersigned Accountant Member is the author) similar issue was dealt with by considering the decisions of Hon'ble Jurisdictional High Court of Bombay in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 125 taxmann.com 253 (Bom) and Veena Estate (P) Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bom). The relevant observations and findings from the said decision of the Coordinate Bench are extracted below:

"2.1 Assessee has also raised an additional ground by application dated 19.06.2024 which is purely legal in nature and does not require examination of additional facts. The said additional ground is reproduced as under:

"1. In the facts and circumstances of the case and in law, the Learned Assessing Officer had erred in initiating the penalty proceeding by issuing the impugned show cause notice dated 30.11.2017 under section 274 read with section 271(1)(c)- without striking off the irrelevant/inapplicable limb; thereby issuing a defective notice which is bad in the eyes of law as held by Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh vs. DCIT [2021] 125 taxmann.com 253 (Bombay) and several other binding judicial precedents."

3. The additional ground raised by the assessee is purely legal in nature and therefore is admitted for adjudication. We first take up this additional ground which is in respect of challenging the imposition of penalty of Rs.10,46,312/- u/s.271(1)(c) of the Act, which liable to be quashed since Ld. Assessing Officer has failed to specify the charge in the notice issued u/s.274 r.w.s. 271(1)(c) as held by Hon'ble Jurisdictional High Court of Bombay in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021)125 taxmann.com 253(Bom),.....

.....5. The said notice is dated 30.11.2017. He thus, referring to the said notice submitted that no specific charge has been made out by the Ld. AO for imposition of penalty. He placed reliance on several judicial precedents including that of the Hon'ble jurisdictional High Court of Bombay in the case of Mohd. Farhan A. Shaikh (Supra), wherein the Hon'ble Court had come to the conclusion that unless the charge against the assessee is specific, the same could not be maintained. Thus, on this sole technical defect in the notice issued u/s. 274 read with section 271(1)(c) of the Act, the penalty so imposed is ought to be deleted.

6. Per contra, Ld. Sr. DR placed reliance on another decision of Hon'ble Jurisdictional High Court of Bombay in the case of Veena Estate (P) Ltd. Vs. CIT (2024) 158 taxmann.com 341 (BOM) to counter the submissions made by the Ld. Counsel for the assessee. She submitted that according to this decision, it is not a case of any real prejudice or a case of breach of principles of natural justice. 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. According to her, in the said decision, the test of prejudice is inapplicable in the facts of the case. Thus, according to her, there is no defect in the notice so issued and the penalty so imposed is rightly done by the Ld. Assessing Officer.

7. In the rebuttal, Ld. Counsel for the assessee strongly asserted that the facts of the case in the decision of Veena Estates (P) Ltd. (Supra) are peculiar and cannot be applied in general to every other case. He referred to para 1 of the said order to point out the peculiarities of the facts involved in this case. For this, from the first para, he read out the following:

"The question is as to whether an alleged defect in the notice issued to the appellant u/s.271(1)(c) r.w.s.274 of the Act, in regard to which the appellant had never raised an objection from the very inception, i.e., since last 30 years (from 19.08.1993) can now be permitted to be raised, in the absence of any prejudice being caused to the appellant assessee."

7.1. He further pointed out from para 3 of the said order that the appeal was admitted by the Hon'ble Court by order dated 14.09.2004 on the substantial question of law raised therein. He further referred to para 4 to point out that during the pendency of the hearing, it was only by oral application that a technical plea of vagueness in the notice was raised before the Hon'ble Court, thereby the question was recorded by passing an order on 13.07.2023 which is almost 20 years after the admission of the appeal along with its substantial question of law.

7.2. Ld. Counsel then referred to para 34 on the observation made by the Hon'ble Court where the Court questioned itself as to-

"Should the Court now after more than 20 years of the order being passed by the Tribunal accept the contention as urged on behalf of the assessee that in these circumstances, the Court should accept the notice as issued to the assessee u/s.274 of IT Act was defective, and hence the proceedings would stand covered by the decision of the Coordinate Bench in this Court in Ventura Textiles Ltd. (Supra)".

7.3. On this above questions raised by the Hon'ble Court unto itself, it expressed its opinion in para 35 to point out that case of Ventura Textile Ltd. was a case wherein the Court was considering an appeal u/s.260A of the IT Act, whereby for the first time an issue was raised as to whether the order passed u/s.271(1)(c) of the IT Act was bad in view of the fact that both, at the time of initiation as well as at the time of imposition of the penalty, the Assessing Officer was not clear as to which limb of section 271(1)(c) was attracting. It is in this context, the Division Bench of this Court considered the decision in regard to the two ingredients of Section 271(1)(c) being attracted in a notice to be issued for invoking the provisions for levy of penalty.

7.4. Ld. Counsel, further pointed out from para 63, the observation made by the Hon'ble Court –

"Certainly such grievance cannot be raised, i.e., after 23 years, to be new invention, after the Assessing Officer had decided the issue."

7.5. Thus, by pointing out the above referred peculiarities of facts and circumstances in the case of Veena Estates (P) Ltd. (Supra), Ld. Counsel distinguished its applicability in the present case of the assessee, as contended by the Ld. Sr.DR. He further submitted that at the time of issuing the notice u/s.274 r.w.s. 271(1)(c), Assessing Officer is not aware of the fact as to whether assessee is going in appeal or not on the quantum additions made. Hence, the notice so issued for initiating penalty proceedings must contain a specific charge out of the two charges contained in section 271(1)(c) for imposing a penalty on the assessee.

8. We note that in the present case before us, the facts and circumstances are altogether different from the peculiar set of facts as contained in the case of Veena Estates (P) Ltd. pointed out by the Ld. Counsel, narrated above. The observations and findings arrived at by the Hon'ble Court in that case are specific to those peculiar set of facts. In the case of Mohd. Farhan A. Shaikh (Supra), the Hon'ble Jurisdictional High Court of Bombay had held 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.”

9. We therefore, respectfully following the judicial precedent in the case of Hon’ble Jurisdiction High Court of Bombay in the case of Mohd. Farhan A. Shaikh (Supra) delete the penalty imposed in the present case, since similar facts are present in this appeal. Accordingly, grounds taken by the assessee in this respect are allowed.

7. Considering the identical set of facts in the present case and by adopting judicial consistency in terms of the above decision of the Coordinate Bench, the penalty so imposed is deleted. Accordingly, grounds raised by the assessee are allowed.

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

Order is pronounced in the open court on 31 July, 2025

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 July, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai