

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.1322/MUM/2019 (A.Y: 2013-14)**

Shri Jagdish P. Purohit 262/268, Adarsh Hotel Kalbadevi Road, Kalbadevi Mumbai – 400 002  <b>PAN: AANPP6311L</b>	v.	Income Tax Officer – 18(1)(5) Earnest House, Nariman point Mumbai – 400 021
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : Shri Bharat Kumar**

**Department by : Shri Bhera Ram**

**Date of Hearing : 04.03.2020**

**Date of Pronouncement : 13.03.2020**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 53, Mumbai [hereinafter in short “Ld.CIT(A)”] dated 05.12.2018 for the A.Y. 2013-14 in sustaining the penalty levied u/s. 271(1)(c) of the Act.

2. At the outset, Ld. Counsel for the assessee submitted that the initiation of penalty proceedings is bad in law as the Assessing Officer has not specified the limb on which the penalty was proposed to be levied.

The Learned Counsel for the assessee submitted that the additional ground was filed challenging the initiation of penalty proceedings as bad in law. It is submitted that since the additional ground is purely a legal ground the same maybe admitted for adjudication. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., [229 ITR 383]. On hearing the rival contentions, the additional ground raised by the assessee challenging the initiation of penalty proceedings as bad in law for the reason that the Assessing Officer did not strike off irrelevant limbs of the penalty notice is purely a legal ground thus the same is admitted.

3. Ld. Counsel for the assessee referring to the notice issued u/s. 274 r.w.s 271(1)(c) of the Act submitted that the Assessing Officer is not clear as to the charge for which the penalty is initiated i.e. either for concealment of income or for furnishing inaccurate particulars. Referring to the notice Ld. Counsel for the assessee submitted that the inappropriate limb in the notice was not strike off. Ld. Counsel for the assessee referring to the Assessment Order submitted that the Assessing Officer stated that proceedings u/s. 271(1)(c) are initiated for furnishing inaccurate particulars and concealment of income. Referring to Penalty Order, Ld.Counsel for the assessee submitted that Assessing Officer levied

penalty for furnishing inaccurate particulars of income and for concealment of income. Therefore, Ld. Counsel submits that the initiation of penalty proceedings itself is improper and not valid. Ld. Counsel for the assessee submitted that there is a complete non-application of mind by the Assessing Officer in initiating the penalty proceedings and therefore, levy of penalty is illegal, void, bad in law, initiated by non-application of mind and is without jurisdiction as the penalty notice issued by the Assessing Officer does not strike off the irrelevant portion thereon. Reliance was placed on the decision of Coordinate Bench in the case of M/s. Sia Lifestyles Pvt. Ltd., v. DCIT in ITA.No. 365/Mum/2018 dated 05.03.2019.

4. Ld. DR vehemently supported the orders of the Authorities below.

5. We have heard the rival submissions, perused the orders of the Authorities below, notice issued u/s. 274 r.w.s 271(1)(c) of the Act for initiation of penalty proceedings, we find that Assessing Officer did not strike off and specify the charge/limb for which he is proposing to initiate the penalty proceedings. In the assessment order Assessing Officer stated that proceedings u/s. 271(1)(c) are initiated for furnishing inaccurate particulars and concealment of income. However, in the

penalty order passed it is stated that penalty is levied for furnishing inaccurate particulars of income and for concealment of income.

6. An identical situation has been considered by the Coordinate Bench in *Meherjee Cassinath Holdings v. ACIT* in ITA.No. 2555/MUM/2012 dated 28.04.2017 as to whether the action of the Assessing Officer in initiating penalty proceedings U/s. 271(1)(c) of the Act without striking off one of the limbs and without specifying the specific charge in the notice initiating penalty proceedings for inaccurate particulars of income in the Assessment Order and the Coordinate Bench considering the decision of the Hon'ble Jurisdictional High Court in the case of *CIT v. Samson Perinchery* [392 ITR 4] and also various decisions held that action of the Assessing Officer in non-striking off relevant clause in the notice shows that the charge being made against the assessee is not firm therefore proceedings suffer from non-compliance with principles of natural justice in as much as the Assessing Officer himself is not sure of the charge and the assessee is not made aware as to which of the two limbs of section 271(1)(c) of the Act he has to respond.

7. Following the above decision, similar view has been taken by the Coordinate Bench in the case of *Orbit Enterprises v. ITO* [60 ITR(Trib.) 252]. In the case of *DCIT v. Shri Dhaval D. Shah* in ITA.No.

1337/Mum/2016 & C.O.No.08/Mum/2018 dated 16.05.2018 the Coordinate Bench considered similar and identical issue and following the ratio laid down in the Dilip N. Shroff [210 CTR 228 (SC)] and the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Samson Perinchery (supra) held that the penalty proceedings initiated by the Assessing Officer is bad in law.

8. We further find that the Hon'ble Bombay High Court at Goa in the case of Pr.CIT v. Goa Coastal Resorts and Recreation Pvt. Ltd., in Tax Appeal No. 24 of 2019 dated 11.11.2019 held as under: -

*"5. We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such petition, the two authorities have quite correctly ordered the dropping of penalty proceedings against the petitioner.*

*6. Besides, we note that the Division Bench of this Court in Samson(supra) as well as in New Era Sova Mine(supra) has held that the notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded. In both Samson Perinchery and New Era Sova Mine(supra), the notices issued had not struck off the portion which were inapplicable. From this, the Division Bench concluded that there was no proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings.*

*7. In the present case, as well if the notice dated 30/09/16 (at page 33) is perused, it is apparent that the relevant portions have not*

*been struck off. This coupled with the fact adverted to in paragraph (5) of this order, leaves no ground for interference with the impugned order. The impugned order are quite consistent by the law laid down in the case of Samson Perinchery and New Era Sova Mine(supra) and therefore, warrant no interference.*

8. *The contention based upon MAK Data (P.) Ltd.(supra) also does not appeal to us in the peculiar facts of the present case. The notice in the present case is itself is defective and further, there is no finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.*

9. *For the aforesaid reasons, we hold that no substantial questions of law arises in this appeal. Consequently, this appeal is dismissed”*

9. In the case of Pr.CIT v. New Era Sova Mine in Tax Appeal No. 70 of 2018 dated 18.06.2019 the Hon'ble Bombay High Court at Goa held as under: -

*“2. The subject matter of Appeals concerns penalty levied by the Assessing Officer on the ground that the Assessee had not filed returns within the due date. The Assessee was claimed to have filed returns after a search was conducted in their premises under Section 132 of the Income Tax Act. The Department's case was that but for such search, the income now offered to tax by the Assessee would not have been so offered. The Tribunal has correctly observed in its impugned order that the penalty notices in these cases were not issued for any specific charge, that is to say, for concealment of particulars of income or furnishing of inaccurate particulars. When the matter was before the CIT (A), he referred to the decision of Karnataka High Court in the case of CIT vs. SSA's Emerald Meadows (ITA No.380 of 2015 dated 23.11.2015). The Court had held that no notice could be issued under Section 274, read with Section 271(1)(c) of the Income Tax Act, without indicating which particular limb of Section 271(1)(c) was invoked for initiating the penalty proceedings. The Court took the view that the matter was covered by an earlier decision of a Division Bench of that Court and did not involve any substantial question of law. The matter, thereafter, went in an SLP before the Supreme Court, who did not find any merit in the petition. The Tribunal also noticed that the*

*jurisdictional High Court in the case of 392 ITR 4 had also taken the same view.*

3. *The Appeals, accordingly, do not involve any substantial question of law and do not merit admission. The Appeals are, accordingly, dismissed.”*

10. In the case of Pr.CIT v. Goa Dourado Promotions Pvt. Ltd., in Tax Appeal No. 18 of 2019 dated 26.11.2019 the Hon'ble Bombay High Court at Goa held as under: -

*“2. In this case, Ms. Linhares, the learned Standing Counsel for the appellant urges that the following substantial questions of law arise for consideration: -*

1. *Whether the Ld. ITAT erred in deleting the penalty by not considering the decision of the Apex Court in the case of Mak Data Pvt. Ltd. reported in 2013 (38) Taxman.com 448?*

2. *Whether the Ld. ITAT erred in holding the penalty proceeding fatal for mere failure of the A.O to tick the relevant box in the show cause notice?*

3. *Mr. Rivankar, the learned Counsel for the respondent defends the impugned order of the ITAT, on the basis of the reasons reflected therein. Besides, he relies upon the order dated 11.11.2019 in Tax Appeal No. 24/2019, where under the similar circumstances, this Court, dismissed the Appeal initiated by the Revenue, after considering the decision of the Hon'ble Apex Court in the case of Mak Data (P) Ltd. Vs. Commissioner of Income Tax.*

4. *According to us, the issues raised in this Appeal are fully covered, not only by order dated 11.11.2019 made by us while dismissing Tax Appeal No. 24/2019, but, further, by the decision of this Court in the case of Commissioner of Income Tax-11 Vs. Shri Samson Perinchery and Principal Commissioner of Income Tax Vs. New Era Sova Mine.*

5. *Accordingly, for the reasons set out in our order dated 11.11.2019, we hold that the aforesaid substantial questions of law do not arise in this Appeal. Accordingly, this Appeal is liable to be dismissed and is hereby dismissed. There shall be no order as to costs."*

11. Thus, respectfully following the above said decisions, we hold that the notice was issued by the Assessing Officer U/s. 274 r.w.s 271(1)(c) of the Act is without specifying the charge for which the notice was issued as was non striking off of the inappropriate limb on account of non-application of mind and therefore the penalty proceedings initiated are bad in law. Thus, we direct the Assessing Officer to delete the penalty levied U/s. 271(1)(c) of the Act.

12. As we have held that the penalty be deleted on the preliminary point the other arguments raised by the Ld. Counsel for the assessee are not being dealt with as it becomes only academic.

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

Order pronounced in the open court on the 13<sup>th</sup> March, 2020.

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 13/03/2020  
Giridhar, Sr.PS

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



**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mum**