IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA NOS. 1596 &1597/MUM/2014 : **A.Ys : 2005-06 & 2006-07**

M/s. Orbit Enterprises 4th floor, Dheeraj Plaza, 23, Hill Road, Bandra (West), Mumbai 400 050 (Appellant) **PAN : AAAFO8570B**	Vs.	ITO-15(2)(2), Mumbai (Respondent)

Assessee by : Shri Sanjeev M. Shah
Revenue by : Shri A.B. Koli

Date of Hearing : 07/06/2017
Date of Pronouncement : 01/09/2017

O R D E R

PER G.S. PANNU, AM :

The captioned two appeals by the assessee relating to Assessment Years 2005-06 and 2006-07 involve a common issue, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. ITA No.1596/Mum/2014, which is an appeal directed against the order of CIT(A)-26, Mumbai dated 30.01.2014, pertaining to the Assessment Year 2005-06, which in turn has arisen from the order

passed by the Assessing Officer, Mumbai dated 29.03.2012 under section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') is taken as the lead case.

3. In both the appeals, the common issue arises from the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act.

4. Insofar as Assessment Year 2005-06 is concerned, the relevant facts can be summarised as follows. In an assessment finalised u/s 143(3) r.w.s. 147 of the Act dated 22.12.2008, the Assessing Officer made an addition of Rs.68,20,000/- representing unaccounted amounts received by the assessee for sale of flats to one M/s. Unimark Remedies Ltd. The relevant discussion in the assessment order shows that the addition was based on documents and information found in the course of a search action u/s 132(1) of the Act in the premises of M/s. Unimark Remedies Ltd. Be that as it may, subsequently the Assessing Officer passed an order u/s 271(1)(c) of the Act dated 29.03.2012 holding the assessee guilty u/s 271(1)(c) of the Act whereby he levied a penalty of Rs.23,87,000/- being 100% of the amount of tax sought to be evaded on the aforesaid income. The levy of penalty u/s 271(1)(c) of the Act has since been upheld by the CIT(A) also, against which the assessee is in further appeal before the Tribunal.

5. Before the Tribunal, the assessee has assailed the imposition of penalty in the Memo of appeal by raising the following Grounds of appeal :-

"1. The Learned CIT(A) has erred in law and on facts in upholding the validity of the order passed by the Income Tax Officer 15(2)(2), Mumbai (AO) on 29th March 2012 under Section 271(1)(c) of the Act which are invalid and bad in law.

2. The Learned CIT(A) has erred in law and on facts in sustaining the order of the Assessing Officer levying penalty under Section 271(1)(c) of the Act amounting to Rs.23,87,000/-."

6. Subsequently, vide a written communication dated 13.01.2017, the appellant has raised additional Grounds of appeal, which read as under :-

"I) On the facts and in law, learned AO erred in not recording any satisfaction whatsoever much less as contemplated in Section 271(1B) before initiating and imposing penalty under Section 271(1)(c).

II) On the facts and in law, learned AO erred in levying penalty relying on both limbs of Section 271(1)(c) without specifically invoking same in the show cause notices dated 22.12.2008 and 01.03.2012 as also assessment order dated 22.12.2008.

III) On the facts and in law, learned AO further erred in this connection in saddling Appellant with penalty under Section 271(1)(c) on grounds different than that mentioned in aforesaid show cause notice and assessment order dated 22.12.2008."

7. At the time of hearing, the learned representative pointed out that the additional Grounds of appeal raised by the assessee involve a point of law for which the necessary facts are on record and, therefore, the same be admitted for adjudication. Insofar as the admission of the additional Grounds of appeal are concerned, there is no serious

opposition by the ld. DR except pointing out that these aspects were otherwise not raised before the lower authorities.

8. Be that as it may, in our considered opinion, following the ratio of the judgment of the Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd., 229 ITR 383 (SC)* as well as in the case of *Jute Corporation of India Ltd., 187 ITR 688 (SC)*, the additional Grounds raised before us deserve to be admitted for adjudication inasmuch as the same involve points of law and does not require any further or fresh investigation of facts. It is also clear that the issues raised in the additional Grounds of appeal go to the root of the jurisdiction of the Assessing Officer to impose penalty u/s 271(1)(c) of the Act and, therefore, the same are relevant to determine the liability of the assessee for penalty u/s 271(1)(c) of the Act. Accordingly, the additional Grounds were admitted for adjudication and accordingly, the rival counsels were also heard on merits.

9. In the context of Additional Ground of Appeal no. II, a pertinent point that is sought to be raised by the assessee is to the effect that the penalty notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 22.12.2008, a copy of which has been placed on record, shows non-application of mind by the Assessing Officer inasmuch as the same has been issued in a standard proforma and the irrelevant portion of the notice has not been struck off. It has been canvassed that similar point has been dealt with in the following judgments :-

i) Meherjee Cassinath Holdings Pvt. Ltd., ITA No. 2555/Mum/2012 dated 28.04.2017;

ii) Jehangir HC Jehangir, ITA No. 1261/Mum/2011 dated 17.05.2017;

iii) M/s. Wadhwa Estate & Developers India Pvt. Ltd., ITA No. 2158/Mum/2016 dated 24.02.2017;

iv) Shri Samson Perinchery, ITA Nos. 1154 of 2014, 953 of 2014, 1097 of 2014 & 1226 of 2014 dated 05.01.2017 (Hon'ble Bombay High Court);

v) M/s. SSA's Emerald Meadows, CC No. 11485/2016 dated 05.08.2016 (Hon'ble Supreme Court);

vi) M/s. SSA's Emerald Meadows, ITA No. 380 of 2015 dated 23.11.2015 (Hon'ble Karnataka High Court); and

vii) Mrs. Piedade Perinchery, ITA No. 1310 of 2014 dated 10.01.2017 (Hon'ble Bombay High Court)

and the penalty has been deleted on this aspect.

10. On this aspect, the ld. CIT-DR pointed out that the intention of the Assessing Officer to levy penalty was already communicated through the discussion in the assessment order wherein the penalty has been initiated for concealment of income. Further, he has made a reference to para 4 of the penalty order passed by the Assessing Officer to point out the reply filed by the assessee which, *inter-alia*, shows that the assessee had understood that the penalty proceedings were initiated for concealment of income. It was, therefore, contended that non-striking off of the irrelevant portion in the notice u/s 274 r.w.s. 271(1)(c) of the Act dated 22.12.2008 does not create any ambiguity as

the assessee was aware that the proceedings have been initiated for concealment of income and not for furnishing of inaccurate particulars of income. Apart therefrom, it is contended that Sec. 292BB of the Act saves the error, if any, in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act and, therefore, the plea of the assessee is not justified. Further, the ld. CIT-DR relied upon the decision of the Hon'ble Patna High Court in the case of *Mithila Motors (P.) Limited, 149 ITR 751 (Patna)* for the proposition that mention of an incorrect charge in the notice of penalty would not render the penalty proceedings *void-ab-initio*.

11. In reply, the learned representative for the assessee pointed out that non-striking off of irrelevant portion of the standard form of notice u/s 274 r.w.s. 271(1)(c) of the Act is a legal infirmity, which is fatal to the imposition of penalty because in the absence of specifying the ground on which penalty is initiated, there is a violation of principles of natural justice. In this context, the learned representative has specifically pointed out the judgments of the Hon'ble Karnataka High Court in the case of *Manjunatha Cotton and Ginning Factory & Ors., 359 ITR 565 (Karn.)* and *M/s. SSA's Emerald Meadows (supra)* wherein even the SLP filed before the Hon'ble Supreme Court has also been dismissed.

12. We have carefully considered the rival submissions. Sec. 271(1)(c) of the Act postulates that penalty prescribed therein can be levied on existence of any of the two situations, namely for concealment of particulars of income or for furnishing inaccurate particulars of such income. It has been judicially well understood by

now that 'concealment of particulars of income' and 'furnishing of inaccurate particulars of income' referred to in Sec. 271(1)(c) of the Act denote two different connotations. As a ready reference for the aforesaid proposition, we may look upon the judgments of the Hon'ble Supreme Court in the case of *Dilip N. Shroff, 161 Taxman 218 (SC)* and also *T. Ashok Pai*, *292 ITR 11 (SC)* to appreciate that the aforesaid two expressions convey different connotations. Having understood that the two expressions have different connotations, the Mumbai Bench of the Tribunal in the case of *Meherjee Cassinath Holdings Pvt. Ltd. (supra)*, wherein one of us is a party, held that it was imperative for the Assessing Officer to make the assessee aware in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act as to which of the two limbs are being put-up against him for the purposes of levy of penalty u/s 271(1)(c) of the Act. Ostensibly, unless the assessee is made aware of the specific charge against him, it would be violative of the principles of natural justice inasmuch as the assessee would not be in a position to put up his defence appropriately. It is in this manner one has to appreciate the point being canvassed by the assessee before us, which is based on the tone and tenor of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 22.12.2008, a copy of which has been placed on record. Notably, the relevant discussion made by the Mumbai Bench of the Tribunal in the case of *Meherjee Cassinath Holdings Pvt. Ltd. (supra)* is as under :-

> *"8. ..... It is also a well accepted proposition that 'concealment of the particulars of income' and 'furnishing of inaccurate particulars of income' referred to in Sec. 271(1)(c) of the Act denote different connotations. In fact, this distinction has been appreciated even at the level of Hon'ble Supreme Court not only in the case of Dilip N.*

Shroff (supra) but also in the case of T.Ashok Pai, 292 ITR 11 (SC). Therefore, if the two expressions, namely 'concealment of the particulars of income' and 'furnishing of inaccurate particulars of income' have different connotations, it is imperative for the assessee to be made aware as to which of the two is being put against him for the purpose of levy of penalty u/s 271(1)(c) of the Act, so that the assessee can defend accordingly. It is in this background that one has to appreciate the preliminary plea of assessee, which is based on the manner in which the notice u/s 274 r.w.s. 271(1)(c) of the Act dated 10.12.2010 has been issued to the assessee-company. A copy of the said notice has been placed on record and the learned representative canvassed that the same has been issued by the Assessing Officer in a standard proforma, without striking out the irrelevant clause. In other words, the notice refers to both the limbs of Sec. 271(1)(c) of the Act, namely concealment of the particulars of income as well as furnishing of inaccurate particulars of income. Quite clearly, non-striking-off of the irrelevant limb in the said notice does not convey to the assessee as to which of the two charges it has to respond. The aforesaid infirmity in the notice has been sought to be demonstrated as a reflection of non-application of mind by the Assessing Officer, and in support, reference has been made to the following specific discussion in the order of Hon'ble Supreme Court in the case of Dilip N. Shroff (supra):-

> *"83. It is of some significance that in the standard proforma 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. Thus, the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing the order of assessment laid emphasis that he had dealt with both the situations.*
>
> *84. The impugned order, therefore, suffers from non-application of mind. It was also bound to comply with the*

principles of natural justice. (See Malabar Industrial Co. Ltd. v. CIT [2000] 2 SCC 718]"

9. Factually speaking, the aforesaid plea of assessee is borne out of record and having regard to the parity of reasoning laid down by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the notice in the instant case does suffer from the vice of non-application of mind by the Assessing Officer. In fact, a similar proposition was also enunciated by the Hon'ble Karnataka High Court in the case of M/s. SSA's Emerald Meadows (supra) and against such a judgment, the Special Leave Petition filed by the Revenue has since been dismissed by the Hon'ble Supreme Court vide order dated 5.8.2016, a copy of which is also placed on record.

10. In fact, at the time of hearing, the ld. CIT-DR has not disputed the factual matrix, but sought to point out that there is due application of mind by the Assessing Officer which can be demonstrated from the discussion in the assessment order, wherein after discussing the reasons for the disallowance, he has recorded a satisfaction that penalty proceedings are initiated u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income. In our considered opinion, the attempt of the ld. CIT-DR to demonstrate application of mind by the Assessing Officer is no defence inasmuch as the Hon'ble Supreme Court has approved the factum of non-striking off of the irrelevant clause in the notice as reflective of non-application of mind by the Assessing Officer. Since the factual matrix in the present case conforms to the proposition laid down by the Hon'ble Supreme Court, we proceed to reject the arguments advanced by the ld. CIT-DR based on the observations of the Assessing Officer in the assessment order. Further, it is also noticeable that such proposition has been considered by the Hon'ble Bombay High Court also in the case of Shri Samson Perinchery, ITA Nos. 1154, 953, 1097 & 1126 of 2014 dated 5.1.2017 (supra) and the decision of the Tribunal holding levy of penalty in such circumstances being bad, has been approved.

11. Apart from the aforesaid, the ld. CIT-DR made an argument based on the decision of the Hon'ble Bombay High Court in the case of Smt. Kaushalya & Others, 216 ITR 660 (Bom.) to canvass support for his plea that non-striking off of the irrelevant portion of notice would not invalidate the imposition of penalty u/s 271(1)(c) of the Act. We have carefully considered the said argument set-up by the ld. CIT-DR and find that a similar issue had come up before our coordinate Bench in the case of Dr. Sarita Milind Davare (supra). Our coordinate Bench, after considering the judgment of the Hon'ble Bombay High Court in the case of Smt. Kaushalya & Ors., (supra) as also the judgments of the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra) and Dharmendra Textile Processors, 306 ITR 277 (SC) deduced as under :-

> *"12. A combined reading of the decision rendered by Hon'ble Bombay High Court in the case of Smt. B Kaushalya and Others (supra) and the decision rendered by Hon'ble Supreme Court in the case of Dilip N Shroff (supra) would make it clear that there should be application of mind on the part of the AO at the time of issuing notice. In the case of Lakhdir Lalji (supra), the AO issued notice u/s 274 for concealment of particulars of income but levied penalty for furnishing inaccurate particulars of income. The Hon'ble Gujarat High Court quashed the penalty since the basis for the penalty proceedings disappeared when it was held that there was no suppression of income. The Hon'ble Kerala High Court has struck down the penalty imposed in the case of N.N.Subramania Iyer Vs. Union of India (supra), when there is no indication in the notice for what contravention the petitioner was called upon to show cause why a penalty should not be imposed. In the instant case, the AO did not specify the charge for which penalty proceedings were initiated and further he has issued a notice meant for calling the assessee to furnish the return of income. Hence, in the instant case, the assessing officer did not specify the charge for which the penalty proceedings were initiated and also issued an incorrect notice. Both the acts of the AO, in our view, clearly show that the AO did not apply his mind when he issued notice to the assessee*

and he was not sure as to what purpose the notice was issued. The Hon'ble Bombay High Court has discussed about non-application of mind in the case of Kaushalya (supra) and observed as under:-

> *"....The notice clearly demonstrated non-application of mind on the part of the Inspecting Assistant Commissioner. The vagueness and ambiguity in the notice had also prejudiced the right of reasonable opportunity of the assessee since he did not know what exact charge he had to face. In this back ground, quashing of the penalty proceedings for the assessment year 1967-68 seems to be fully justified."*

In the instant case also, we are of the view that the AO has issued a notice, that too incorrect one, in a routine manner. Further the notice did not specify the charge for which the penalty notice was issued. Hence, in our view, the AO has failed to apply his mind at the time of issuing penalty notice to the assessee."

12. The aforesaid discussion clearly brings out as to the reasons why the parity of reasoning laid down by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra) is to prevail. Following the decision of our coordinate Bench in the case of Dr. Sarita Milind Davare (supra), we hereby reject the aforesaid argument of the ld. CIT-DR.

13. Apart from the aforesaid discussion, we may also refer to the one more seminal feature of this case which would demonstrate the importance of non-striking off of irrelevant clause in the notice by the Assessing Officer. As noted earlier, in the assessment order dated 10.12.2010 the Assessing Officer records that the penalty proceedings u/s 271(1)(c) of the Act are to be initiated for furnishing of inaccurate particulars of income. However, in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act of even date, both the limbs of Sec. 271(1)(c) of the Act are reproduced in the proforma notice and the irrelevant clause has not been struck-off. Quite clearly, the observation of the

Assessing Officer in the assessment order and non-striking off of the irrelevant clause in the notice clearly brings out the diffidence on the part of Assessing Officer and there is no clear and crystallised charge being conveyed to the assessee u/s 271(1)(c), which has to be met by him. As noted by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the quasi-criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice, and in the present case, considering the observations of the Assessing Officer in the assessment order alongside his action of non-striking off of the irrelevant clause in the notice shows that the charge being made against the assessee qua Sec. 271(1)(c) of the Act is not firm and, therefore, the proceedings suffer from non-compliance with principles of natural justice inasmuch as the Assessing Officer is himself unsure and assessee is not made aware as to which of the two limbs of Sec. 271(1)(c) of the Act he has to respond.

14. Therefore, in view of the aforesaid discussion, in our view, the notice issued by the Assessing Officer u/s 274 r.w.s. 271(1)(c) of the Act dated 10.12.2010 is untenable as it suffers from the vice of non-application of mind having regard to the ratio of the judgment of the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra) as well as the judgment of the Hon'ble Bombay High Court in the case of Shri Samson Perinchery (supra). Thus, on this count itself the penalty imposed u/s 271(1)(c) of the Act is liable to be deleted. We hold so. Since the penalty has been deleted on the preliminary point, the other arguments raised by the appellant are not being dealt with."

Therefore, in view of the aforesaid discussion, in our view, the notice issued by the Assessing Officer u/s 274 r.w.s. 271(1)(c) of the Act dated 22.12.2008 is untenable and suffers from the infirmity of non-application of mind by the Assessing Officer. On this count itself, in our view, the penalty imposed u/s 271(1)(c) of the Act deserves to be deleted.

13. At this point, we may also make a reference to the judgment of the Hon'ble Patna High Court relied by the ld. CIT-DR before us. The issue before the Hon'ble Patna High Court was relating to levy of penalty for shortfall in the payment of advance tax paid as compared with the tax finally assessed as payable, but in the notice issued u/s 274 r.w.s. 273(b) of the Act it was incorrectly mentioned that assessee had failed to file its estimate of advance tax. The Hon'ble Patna High Court held that mention of such incorrect charge would not render the penalty proceedings *void-ab-initio*. The aforesaid parity of reasoning has been relied upon by the ld. CIT-DR before us to state that non-striking off of the irrelevant portion of the notice u/s 274 r.w.s. 271(1)(c) of the Act does not render the proceedings invalid. In our view, the said decision does not help the case of the Revenue *qua* the issue before us. Firstly, the Hon'ble Patna High Court itself noted that it was a case of mere "*wrong labelling of the section or some mistake in the charge framed against the assessee"* which does not prejudice the assessee. Secondly, non-striking off of the irrelevant clause in the notice u/s 274 r.w.s. 271(1)(c) of the Act has been completely differently understood by the various High Courts, including that by the Hon'ble Jurisdictional High Court of Bombay. In the case of *Shri Samson Perinchery (supra)*, the Hon'ble Bombay High Court noted that the order imposing penalty u/s 271(1)(c) of the Act has to be made only on the ground on which the penalty proceedings have been initiated. In the case of *Shri Samson Perinchery (supra)*, the Revenue had put up an argument to the effect that there is no difference between furnishing of inaccurate particulars of income and concealment of income. The aforesaid argument has been specifically rejected by the Hon'ble High

Court by referring to the judgment of the Hon'ble Supreme Court in the case of *T. Ashok Pai, 292 ITR 11 (SC)*. It was further noted that the judgment in the case of *T. Ashok Pai (supra)* has been relied upon by the Hon'ble Karnataka High Court in the case of *Manjunatha Cotton and Ginning Factory & Ors., 359 ITR 565 (Karn.)*. The Hon'ble High Court approved the proposition that once the two limbs contained in the notice u/s 274 r.w.s. 271(1)(c) of the Act, namely concealment of income and furnishing of inaccurate particulars of income are understood to be carrying different meanings/connotations, non-striking off of the irrelevant clause or striking off one of the limbs and imposing penalty on the other limb is not as per law. Thirdly, it may be noted that the issue before the Hon'ble High Court was incorrect mentioning of charge in the show cause notice, but the case before us is of non-mentioning of the charge at all. Therefore, for all the above reasons, non-striking off of the irrelevant clause in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act cannot be said to be a mere wrong labelling of the section or some mistake of the nature that was before the Hon'ble Patna High Court in the case of *Mithila Motors (P.) Limited (supra)*. Therefore, the judgment of the Hon'ble Patna High Court does not help the case of the Revenue before us.

14. The other plea of the ld. CIT-DR before us was that there was no ambiguity inasmuch as the Assessing Officer had made aware the assessee about the charge being made against him, namely concealment of income, by referring to the assessment order and also the reply of the assessee filed at the time of penalty proceedings. In our considered opinion, if one were to examine the entire conspectus

of fact-situation starting from the assessment order upto the passing of penalty order, the error in the argument set-up by the ld. CIT-DR would be clear. In the assessment order dated 22.12.2008, the Assessing Officer records that the penalty proceedings u/s 271(1)(c) of the Act are initiated for concealment of income while in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act of even date, both the limbs of Sec. 271(1)(c) of the Act are left intact in the standard printed notice, as the irrelevant clause has not been struck-off. This contradiction in the assessment order vis-a-vis the penalty notice issued u/s 274 r.w.s. 271(1)(c) of the Act on the same date clearly brings out a confusion on the part of the Assessing Officer, and apparently it is a situation where assessee is not aware about the clear and crystallised charge being made against him, thus violating the principles of natural justice. The penalty proceedings being quasi-criminal in nature, as noted by the Hon'ble Supreme Court in the case of *Dilip N. Shroff (supra),* the same are necessarily required to be in compliance with the principles of natural justice. In this view of the matter, in our view, the ld. CIT-DR is not correct in contending that non-striking off of the irrelevant clause in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act is not material, and that the assessee had understood that the proceedings were initiated for concealment of income based on the observations in the assessment order itself. Before parting, we may also refer to a recent judgment of the Hon'ble Karnataka High Court in the case of *S. Chandrashekar, 396 ITR 538 (Karn.)* wherein a notice issued u/s 274 r.w.s. 271(1)(c) of the Act in printed form without specifying the grounds of initiation of penalty proceedings was held to be invalid and untenable in law. As per the Hon'ble High Court, in the absence of any specific ground in the notice

so issued, there is a breach of principles of natural justice and accordingly, the order imposing penalty cannot be sustained.

15. Before parting, we may also deal with the argument set-up by the ld. CIT-DR based on the provision of Sec. 292BB of the Act. Notably, Sec. 292BB of the Act has been inserted w.e.f. 01.04.2008 and is understood basically as a rule of evidence. The implication of Sec. 292BB of the Act is that once the assessee appears in any proceedings or has co-operated in any inquiry relating to assessment or reassessment, it shall be deemed that any notice under any provisions of the Act that is required to be served has been duly served upon him in accordance with the provisions of the Act and under these circumstances, assessee would be precluded from objecting that a notice that was required to be served under the Act was either not served upon him or was not served in time or was served in an improper manner. In our considered opinion, the provisions of Sec. 292BB of the Act have no relevance in the context of the impugned examination of the efficacy of the notice issued by the Assessing Officer u/s 274 r.w.s. 271(1)(c) of the Act. Notably, the issue before us is not about the service of notice but as to whether the contents of the notice issued meets with the requirements of law. Therefore, the said argument of the ld. CIT-DR is also rejected.

16. In view of the aforesaid discussion, in our view, having regard to the fact that in the instant case the notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 29.03.2012 does not specify the grounds of initiation of penalty proceedings, the same is invalid and untenable in

the eyes of law. Accordingly, the penalty imposed u/s 271(1)(c) of the Act is directed to be deleted on this count itself.

17. Since the penalty has been deleted on the preliminary point, the other arguments of the assessee dealing with the merits of the levy of penalty are not being dealt with as the same are rendered academic in nature.

18. In the result, appeal of the assessee for the Assessment Year 2005-06 is allowed.

19. It was a common point between the parties that the facts and circumstances in ITA No. 1597/Mum/2014 for Assessment Year 2006-07 are *pari materia* to those considered by us in ITA No. 1596/Mum/2014 for Assessment Year 2005-06, therefore, our decision therein shall apply *mutatis mutandis* in the said appeal also.

20. Resultantly, both the appeals of the assessee are allowed.

Order pronounced in the open court on 1st September, 2017.

Sd/-	Sd/-
(RAVISH SOOD)	**(G.S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Date : 1st September, 2017

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Copy to :

1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, "C" Bench, Mumbai
6) Guard file

By Order

Asstt. Registrar/Sr. Private Secretary
I.T.A.T, Mumbai