| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

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

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 6584/Mum/2011
Assessment Year: 2002-03

Shri Ambrish Manoj Dhupelia 12-13, Esplanade 3rd Floor, Amrit Keshav Nayak Marg Fort Mumbai - 400001 **[PAN: AAIPD2710L]**	Vs	**DCIT, Central Circle – I, Mumbai**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

I.T.A. No. 6585/Mum/2011
Assessment Year: 2002-03

Ms. Bhavya Manoj Dhupelia **(Now Mrs. Bhavya S. Shanbhag)** 12-13, Esplanade 3rd Floor, Amrit Keshav Nayak Marg Fort Mumbai - 400001 **[PAN: AAIPD2710L]**	Vs	**DCIT, Central Circle – I, Mumbai**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

I.T.A. No. 6586/Mum/2011
Assessment Year: 2002-03

Mr. Mohan Manoj Dhupelia 12-13, Esplanade 3rd Floor, Amrit Keshav Nayak Marg Fort Mumbai - 400001 **[PAN: AAIPD2710L]**	Vs	**DCIT, Central Circle – I, Mumbai**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Dr. K. Shivaram, S. Adv. & Shri Sanjay Parekh, A/Rs
Revenue by :	Ms. Monika H. Pande, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 10/12/2024
घोषणा की तारीख /Date of Pronouncement: 13/12/2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 6584/Mum/2011, I.T.A. No. 6585/Mum/2011 & I.T.A. No. 6586/Mum/2011 are three separate appeals by three different assessees of the same family preferred against three separate orders of the ld. CIT(A)-36, Mumbai [hereinafter 'the ld. CIT(A)'], pertaining to AY 2002-03.

2. These appeals are against the levy of penalty u/s 271(1)(c) of the Act and since the underlying facts in the issues are identical in all the appeals, they were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. In all the appeals, the respective assessees have raised an additional ground of appeal claiming that the ld. CIT(A) erred on facts and in law in confirming the penalty levied by the AO without appreciating that the notice u/s 274 of the Act did not specify the charge for which the penalty proceedings u/s 271(1)(c) of the Act had been initiated i.e., for concealment of income or for furnishing inaccurate particulars of income. Hence the penalty order u/s 271(1)(c) of the Act is bad in law.

4. The assessee has also raised an additional plea that since substantial question of law has been admitted by the Hon'ble High Court against the quantum additions, the penalty cannot be levied u/s 271(1)(c) of the Act in light of the decision of the Hon'ble Bombay High Court in the case of *Nayan Builders and Developers [(2014) 368 ITR 722 (Bombay)]*.

5. Representatives of both the sides were heard at length on the legal issues raised hereinabove. Case records carefully perused and the relevant judicial decisions brought to our notice duly considered.

6. *(a) On non-striking of limb in the penalty notice:-*

The impugned notices are as under:-

आयकर अधिनियम, 1961 की धारा 271 के साथ पढी गयी धारा 274 के अधीन सूचना — आ.चू.वि.२९/ I.T.N.S.-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

22(1)(c) — Penalty/09-10

सेवा में/To — आयकर कार्यालय/Income-tax Office

दिनांक / Dated 30-12-2009

Shri Ambrish Manuj Dhapadia,
12-13, Esplanade, 3rd floor,
Amrit Keshav Nayak Marg,
Fort,
Mumbai - 400 001

Recd. on 31/12/09

चूंकि कर निर्धारण वर्ष _____ के सम्बन्ध में मेरे यहां होने वाली कार्रवाई के दौरान मुझे प्रतीत होता है कि आपने :-

Whereas in the course of proceedings before me for the assessment year 2002-03 it appears to me that you :-

*बिना उचित कारण के वह आय विवरणी नहीं दी है जो आपको भारतीय आयकर अधिनियम, 1922 की 22(1)/22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थी या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961, की धारा 139(2)/148 के अधीन दी गई सूचना सं. _____ दि. _____ अनुसार दाखिल करनी थी अथवा उचित कारण के बिना आपने दिए गए समय के अन्दर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अपेक्षित रीति से विवरणी नहीं दी है।

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No. _____ dated _____ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

अ.नि.अ. / P.T.O.

2

*बिना उचित कारण के आपने भारतीय आयकर अधिनियम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना सं. _____ दि. _____ का अनुपालन नहीं किया है |

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/143(2) of the Income-tax Act, 1961. No. _____ dated _____

*अपनी आय के ब्योरे छिपा लिए है या ..... इस प्रकार की आय के ब्योरे गलत दिए है

*have concealed the particulars of your income or ..... Furnished inaccurate particulars of such Income.

आपको एतद्द्वारा सूचित किया जाता है कि दि. _____ 20 _____ को _____ बजे अ.म./पू.म. में आप मेरे कार्यालय में उपस्थित हों और कारण बताएं कि आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर दण्ड लगाने का आदेश क्यों न दिया जाए | यदि आप स्वयं उपस्थित होकर या प्राधिकृत प्रतिनिधि द्वारा सुनवाई के लिए दिए गए अवसर का लाभ नहीं उठाना चाहते तो उक्त तारीख को या उससे पूर्व लिखकर इसका कारण बताएं, जिस पर धारा 271 के अधीन कोई ऐसा आदेश देने के पूर्व विचार किया जाएगा |

Your are hereby requested to appear before me at _____ A.M./P.M. on _____ 20 _____ And show cause why an order imposing a penalty on you should not be made under Section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section 271. (1)(c)

* Within 15 days from the receipts of this notice.

(मुहर)
(Seal)

निर्धारण अधिकारी
Assessing Officer

*जो शब्द या पैरे अनावश्यक हों, उन्हें काट दीजिए
*Delete inappropriate words and paragraphs.

~~आ.कर अधि. 29/ ITNS-29~~

आयकर अधिनियम, 1961 की धारा 271 के साथ पढी गयी धारा 274 के अधीन सूचना

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Por/36/Pg 76/09-10

Dy. Director of Income Tax (Inv.) Circle 1
9th Floor, Old CGO Bldg.,
Annexe, N. K. Road,
Mumbai - 400 020.

आयकर कार्यालय/Income-tax Office

सेवा में/To

वार्ताक / Dated 30.12.2009

M/s. Bhavya Manoj Dhufelia,
12-13, Esplanade 3rd floor,
Amrit Keshav Nayak marg,
Mumbai - 400 001

Recd. on 31.12.09

चूंकि कर निर्धारण वर्ष _____ के सम्बन्ध में मेरे यहां होने वाली कार्यवाई के दौरान मुझे प्रतीत होता है कि आपने :-

Whereas in the course of proceedings before me for the assessment year 2002-03 it appears to me that you :-

*बिना उचित कारण के वह आय विवरणी नहीं दी है जो आपको भारतीय आयकर अधिनियम, 1922 की 22(1)/22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थी या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961, की धारा 139(2)/148 के अधीन दी गई सूचना सं. _____ ता. _____ अनुसार दाखिल करनी थी अथवा उचित कारण के बिना आपने दिए गए समय के अन्दर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अपेक्षित रीति से विवरणी नहीं दी है।

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Icome-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No. _____ dated _____ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

क.नि.अ./ DTO

[illegible]

2

[illegible]

*बिना उचित कारण के आपने भारतीय आयकर अधिनियम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना सं. ________ ता. ________ का अनुपालन नहीं किया है।

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/143(2) of the Income-tax Act, 1961. No. ________ dated ________

*अपनी आय के ब्यौरे छिपा लिए है या .... इस प्रकार की आय के ब्यौरे गलत दिए है

*have concealed the particulars of your income or .... Furnished inaccurate particulars of such Income.

आपको एतद्द्वारा सूचित किया जाता है कि ता. ____ 20 ____ को ________ बजे अ.म./पू.म. में आप मेरे कार्यालय में उपस्थित हों और कारण बताएं कि आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर दण्ड लगाने का आदेश क्यों न दिया जाए। यदि आप स्वयं उपस्थित होकर या प्राधिकृत प्रतिनिधि द्वारा सुनवाई के लिए दिए गए अवसर का लाभ नहीं उठाना चाहते तो उक्त तारीख को या उससे पूर्व लिखकर इसका कारण बताएं, जिस पर धारा 271 के अधीन कोई ऐसा आदेश देने के पूर्व विचार किया जाएगा।

Your are hereby requested to appear before me at ________ A.M./P.M. on ________ 20 ________ And show cause why an order imposing a penalty on you should not be made under Section 271 of the Income-tax Act, 1961. if you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section 271. (1) (c)

within 15 days from the receipts of this notice

(मुहर)
(Seal)

निर्धारण अधिकारी
/ Assessing Officer

*जो शब्द या पैरे अनावश्यक हों, उन्हें काट दीजिए
*Delete inappropriate words and paragraphs.

आयकर अधिनियम, 1961 की धारा 271 के साथ पढी गयी धारा 274 के अधीन सूचना

~~आ.कर अधि. 29/ITNS-29~~

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Por/36/Pg76/09-10

Circle I
5th Floor, Old CGO Bldg.,
Annex, N. K. Road,
Mumbai - 400 020.

आयकर कार्यालय/Income-tax Office

सेवा में/To

दिनांक / Dated 30-12-2009

Mrs. Bhavya Manoj Dhufelia,
12-13, Esplanade 3rd floor,
Amrit Keshav Nayak Marg,
Mumbai - 400 001

Recd. on 31/12/09

चूंकि कर निर्धारण वर्ष _____ के सम्बन्ध में मेरे यहां होने वाली कार्यवाई के दौरान मुझे प्रतीत होता है कि आपने :-

Whereas in the course of proceedings before me for the assessment year 2002-03 it appears to me that you :-

*बिना उचित कारण के वह आय विवरणी नहीं दी है जो आपको भारतीय आयकर अधिनियम, 1922 की 22(1)/22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थी या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961, की धारा 139(2)/148 के अधीन दी गई सूचना सं. _____ दि. _____ अनुसार दाखिल करनी थी अथवा उचित कारण के बिना आपने दिए गए समय के अन्दर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अपेक्षित रीति से विवरणी नहीं दी है।

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Icome-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No. _____ dated _____ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

आ.क.अ. / DTO

2

*दिना उचित कारण के आपने भारतीय आयकर अधिनेयम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना सं. _____ ता. _____ का अनुपालन नहीं किया है |

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/143(2) of the Income-tax Act, 1961. No. _____ dated _____

*अपनी आय के ब्योरे छिपा लिए है या ..... इस प्रकार की आय के ब्योरे गलत दिए है

*have concealed the particulars of your income or ..... Furnished inaccurate particulars of such Income.

आपको एतद्द्वारा सूचित किया जाता है कि ता. _____ 20 _____ को _____ बजे अ.म./पू.म. में आप मेरे कार्यालय में उपस्थित हों और कारण बताएं कि आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर दण्ड लगाने का आदेश क्यों न दिया जाए | यदि आप स्वयं उपस्थित होकर या प्राधिकृत प्रतिनिधि द्वारा सुनवाई के लिए दिए गए अवसर का लाभ नहीं उठाना चाहते तो उक्त तारीख को या उससे पूर्व लिखकर इसका कारण बताएं, जिस पर धारा 271 के अधीन कोई ऐसा आदेश देने के पूर्व विचार किया जाएगा |

Your are hereby requested to appear before me at _____ A.M./P.M. on _____ 20 _____ And show cause why an order imposing a penalty on you should not be made under Section 271 of the Income-tax Act, 1961. if you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section 271. (1) (c)

Within 15 days from the receipts of this notice

(गुर्दर)
(Seal)

निर्धारण अधिकारी
Assessing Officer

*जो शब्द या पैरे अनावश्यक हों, उन्हें काट दीजिए
*Delete inappropriate words and paragraphs.

6.1. It can be seen from the aforementioned notices that the AO has not specified under which limb he is initiating the penalty proceedings,

whether for concealment of income or filing of inaccurate particulars of income. The Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh v. Deputy Commissioner of Income Tax, Central Circle 1, Belgaum* reported in *(2021) 434 ITR 1 (Bombay)*, had the occasion to consider identical grievance and the Hon'ble Bombay High Court full Bench at Goa held as under:-

> *"**Question No. 1:** If assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), does a mere defect in notice – not striking off irrelevant matter – vitiate 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 . 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, the first question is answered to the effect that Pr. CIT v. Goa Dourado Promotions (P.) Ltd. [Tax Appeal No. 18 of 2019, dated 26-11-2019] and other cases have adopted an approach more in consonance with the statutory scheme. That means it must be held that CIT v. Smt. Kaushalya [1994] 75 Taxman 549/[1995] 216 ITR 660 (Bom.) does not lay down the correct proposition of law."*

***Question No. 2**: Has Kaushalya failed to discuss the aspect of 'prejudice'?*

184. Indeed, Smt. Kaushalya case (supra) did discuss the aspect of prejudice. As we have already noted, Kaushalya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushalya, "fully knew in detail the exact charge of the Revenue against him". For Kaushalya, 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". Smt. Kaushalya case (supra) closes 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 Smt. Kaushalya case (supra) .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 Case (supra) 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 case (supra), 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 case (supra), 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 Case (supra) 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 [2007] 27 SCC 181, in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. Dr. Binapani Dei AIR 1967 SC 1269. 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 vires Article 14 of the Constitution.*

191. *As a result, we hold that Dilip N. Shroff Case (supra) 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."

6.2. Ratio of this full Bench decision of the Hon'ble Jurisdictional High Court of Bombay squarely applies to the facts of the assessee's case, as the notices u/s 274 r.w.s. 271(1)(c) of the Act (exhibited elsewhere) were issued mechanically in a printed format without striking off the irrelevant portion of the limb and failed to intimate the assessee the relevant limb and charge for which the notice was issued. Thus, respectfully following the aforesaid decision, we hold that the penalty order passed u/s 271(1)(c) of the Act by the AO is bad in law and deserves to be quashed.

7. The ld. D/R in her written submission strongly contended that the Hon'ble Bombay High Court in the case of *Veena Estate P. Ltd. Vs. CIT* in *[2024] 461 ITR 483 (Bombay)* has held that if an assessee does not challenge the validity of a notice during the penalty or appellate proceedings but instead responds substantively to the allegations, such objections are barred at a later stage. This indicates that the assessee understood the notice, intent and scope even if a procedural defect existed. The ld. D/R further emphasised that the Hon'ble High Court has held that procedural defect in penalty notice such as failure to strike off irrelevant limbs do not invalidate penalty proceedings unless the assessee demonstrates actual prejudice to its defence. It was further contended that the judgment in the case of *Mohd. Farhan A. Shaikh (supra)*, is not applicable due to significant factual difference.

8. We have given a thoughtful consideration to the issues raised by the ld. D/R but do not find merits in her submissions. Firstly, the decision of the Hon'ble High Court of Bombay in the case of *Veena Estate P. Ltd. (supra)*, is merely an *interim* order as is evident from the following para of the order:-

> *"69. In the light of the above discussion, we reject the contention as urged on behalf of the assessee that the proceedings would stand covered by the decision of this Court in Ventura Textiles Ltd. (supra). To answer the question of law as initially framed, the proceedings would be required to be heard by the regular Court."*

9. The Hon'ble Supreme Court in the case of *State of Assam vs. Barak Upatyaka D.U. Karmachari Sanstha* in *Civil Appeal No. 6492 of 2002*, decided on 17/03/2009, has observed as under:-

> *"10. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are*

temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non- payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-ordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and (II).

11. What clearly holds the field at present is the principle laid down and reiterated by the Constitution bench of this Court in Steel Authority of India v. National Union Waterfront Workers 2001 (7) SCC 1 wherein this Court categorically held :

> *" We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the government must be subjected to the same limitations in the field of public law - constitutional or administrative law - as the government itself, does not lead to the inference that they become agents of the Centre/state government for all purposes so as to bind such government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law."*
>
> *[emphasis supplied]*

12. We, therefore, reject the interpretation put forth by the respondent, on the tentative observations in Kapila Hingorani(I) and (II), to contend that the government would be liable for payment of salaries and other dues of employees of the public sector undertakings. We are of the considered view that the decision of the High Court cannot therefore be sustained."

10. Moreover, the decision of the Hon'ble Bombay High Court in the case of *Veena Estate P. Ltd. (supra)*, was rendered in the peculiar state of facts of that case inasmuch as in that case, additional ground regarding notice was taken after 23 years for the first time before the Hon'ble High Court which was not raised earlier when the appeal was admitted and the Hon'ble High Court has not admitted the addition ground due to the peculiar facts of the case as the additional ground was raised after

23 years and that too by the interim order, the admission of additional ground was rejected. Thus, the facts are clearly distinguishable.

11. The ld. D/R has also mentioned the decision of the Co-ordinate Bench in the case of *Airen Metal Pvt. Ltd. vs. ACIT in ITA No. 820/JP/2016, AY 2009-10*, but failed to take cognizance of the subsequent order of the Tribunal pursuant to a miscellaneous application in which the Co-ordinate bench has allowed the appeal of the assessee on the point of defect in the notice.

12. In light of the Full Bench decision of the Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh (supra)*, the penalty order is quashed.

13. ***(b) On admission of substantial question of law:-***

The Hon'ble High Court of Bombay in the case of *Ambrish Manoj Dhupelia in Income Tax Appeal (IT) No. 756 of 2015*, has admitted the following substantial question of law:-

> *"(1) Whether in law and on facts and circumstances of the case, the impugned order of the Tribunal is bad in law being perverse and violative of principles of natural justice as the impugned order (1) wrongly/erroneously records and considers vital facts of the case (ii) does not adjudicate/consider the main arguments/ claim/submission of the Appellant (iii) does not consider and give findings on a single case law cited and re- lied upon by the Appellant (v) relies on information without disclosing the same to the Appellant under the guise of confidential information and (v) relies on additional evidence relied by the Revenue and uses the same against the Appellant in violation of Rule 18 and Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963?*
>
> *(2) Whether in law and on facts and circumstances of the case, reopening is bad in law as the recorded rea- sons do not manifest that Assessing Officer had reason to believe that the Appellant's income had escaped assessment (1) as the trust is held to be a discretionary trust, income can be assessed in the hands of the trust and not the beneficiary (ii) as there is no evidence to show that Appellant as an alleged beneficiary of Ambrunova trust has received any benefit from the trust and (iii) there is no evidence showing any investment or deposit in Marline Management S.A. Where allegedly Appellant's name appears as beneficiary?*

(3) Whether in law and on facts and circumstances of the case, reopening is bad in law as the Assessing Officer did not deal with the objections raised by the Appellant with respect to reopening of assessment?

(4) Whether in law and on facts and circumstances of the case, the Tribunal erred in confirming the addition of amount without appreciating that (1) the information supplied by the Revenue did not disclose the name of the Appellant in the list of beneficiary of Ambrunova trust (ii) the Revenue did not supply any evidence to show that the entire balance in Ambrunova Trust was deposited in assessment year 2002-03 itself (iii) the source of information was not authentic and the documents supplied were not authenticated, and thus the entire addition was made on surmises and conjecture, resumptions and the onus cast on the Revenue was not discharged in the light of the law laid down by the Hon'ble Supreme Court in CWT v. Estate of Late HMM Vikramsinhji of Gondal, (2014) 363 ITR 679 (SC)?

(5) Whether in law and on facts and circumstances of the case, income of discretionary trust can be taxed in the hands of the beneficiary only when the income of the trust is distributed and received by the beneficiary? (6) Whether in law and on facts and circumstances of the case, as the alleged trust and trustees are non resident and the income of the trust if any at all, is received outside India the same cannot be taxed in India as per Section 5(2) read with Section 6(4) of the Act?"

14. Similar question of law were admitted in the case of *Mohan Manoj Dhupelia in Income Tax Appeal No. 755 of 2015* and *Bhavya Manoj Dhupelia in Income Tax Appeal No. 754 of 2015.*

15. The Hon'ble Bombay High Court in the case of *Nayan Builders and Developers (supra)*, has held as under:-

"1. Having heard Mr Ahuja, learned counsel appearing on behalf of the appellant, we find that this appeal cannot be entertained as it does not raise any substantial question of law. The imposition of penalty was found not to be justified and the appeal was allowed. As a proof that the penalty was debatable and arguable issue, the Tribunal referred to the order on the assessee's appeal in quantum proceedings and the substantial questions of law which have been framed therein. We have also perused that order dated September 27, 2010, admitting Income Tax Appeal No. 2368 of 2009. In our view, there was no case made out for imposition of penalty and the same was rightly set aside. The appeal raises no substantial question of law, it is dismissed. No costs.

16. In subsequent decision in the case of *CIT vs. Advaita Estate Development Pvt. Ltd. (2017) 98 CCH 97 (Bom.)(HC)*, the Hon'ble Bombay High Court observed as under:-

"6. However, Mr. Tejveer Singh, learned Counsel appearing for the appellant-Revenue seeks to distinguish the decision of this Court in Nayan Builders and Developers Pvt. Ltd. (supra) on the ground that this Court had after recording the fact that where appeals from orders in quantum proceedings of this Court have been admitted as giving rise to substantial question of law then that itself discloses that the issue is debatable. However, Mr. Singh points out that it also further records "In our view there was no case made out for imposition of penalty and the same was rightly set aside." On the basis of the above observation, it is contention of Mr. Tejveer Singh that the appeal from penalty proceeding was not admitted by this Court as on merits no case for imposition of penalty was made out.

7. Mr. Dalal, the learned Counsel for the respondent-assessee invited our attention to the order of the Tribunal dated 18th March, 2011 in the case of Nayan Builders and Developers Pvt. Ltd (supra). On perusal of the Tribunal order dated 18th March, 2011 we note that the Tribunal in Nayan Builders and Developers Pvt. Ltd (supra) had deleted the penalty only on the ground that as substantial question of law had been admitted by this Court in quantum proceedings the issue is debatable. It was on the basis of the aforesaid reasoning of the Tribunal in Nayan Builders and Developers Pvt.Ltd. (supra), that this Court held that no penalty is imposable. Thus the distinction sought to be made by Mr. Tejveer Singh does not assist the Revenue, as it does not exist.

8. In view of the decision taken by this Court in Nayan Builders and Developers Pvt. Ltd (supra) as well as in Aditya Birla Power Co. Ltd. (supra) the proposed question does not give rise to any substantial question of law. Thus not entertained."

17. In light of the decision of the Hon'ble Jurisdictional High Court *(supra)*, on this count also, the order deserves to be quashed.

18. Considering the legal aspect of the case from all possible angles, the impugned penalty deserves to be quashed.

19. In the result, captioned appeals by the assessee are allowed.

Order pronounced in the Court on 13th December, 2024 at Mumbai.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 13/12/2024
SC SrPs

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , **आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai