

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम. बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 2429/Kol/2013
Assessment Year: 2005-06

Swapan Das (PAN: ADGPD9259D)	Vs.	Income-tax Officer, Wd-37(2), Kolkata
Appellant		Respondent

Date of Hearing	27.07.2017
Date of Pronouncement	22.09.2017
For the Appellant	S/Shri Ezaz Khan & Dibyangshu Das, Advocates
For the Respondent	Shri Sital Chandra Das, Addl. CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-XXIV, Kolkata dated 29.08.2013 for AY 2005-06 confirming the penalty imposed by the AO u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. At the outset itself, the Ld. Counsel for the assessee drew our attention to the notice u/s. 274 of the act r.w.s. 271 of the Act dated 31.12.2007 served on the assessee wherein we note that the AO has not struck down the limb of charge/default for which the penalty is being initiated against the assessee. We find that the notice has been issued for “having concealed the particulars of income” or “furnished inaccurate particulars of such income”. We note that in a similar case, the Hon’ble High court of Karnataka in the case of *CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar)* has cancelled the penalty taking note of the fact that the penalty notice did not spell out clearly as to whether the assessee has concealed the particulars of income or has furnished inaccurate particulars of Income. We also find that Hon’ble Karnataka High Court in the case of *CIT Vs. SSA’s Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar)*

endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:

“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar).

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”

We also find that the aforesaid order of the Hon’ble High Court was challenged by the department before the Hon’ble Supreme Court by preferring an SLP which has been dismissed which fact has been reported in CIT Vs. SSA’s Emerald Meadows (2016) 73 taxmann.com 248 (SC).

3. We note that since the penalty notice issued to the assessee dated 31.12.2007 did not spell out as to which default the assessee has committed for which penalty u/s. 271(1)(c) of the Act has been initiated, therefore, respectfully following the Hon’ble Karnataka High Court’s order in Manjunatha Cotton & Ginning Factory (supra) and SSA’s Emerald Meadows (supra), we cancel the penalty imposed by the AO which has been erroneously confirmed by the Id. CIT(A). Therefore, the appeal of the assessee is allowed.

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

Order is pronounced in the open court on 22.09.2017.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 22nd September, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-29, Kolkata
2. Respondent – Shree Swapan Das, 12, Ramnath Biswas Lane, Kol-9.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata
/True Copy,

By order,

Sr. Pvt. Secretary