

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “D” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.1221/Kol/2016**  
Assessment Year:2009-10

Sukhendu Ghosh 20/15A, Seal Lane, Tangra, Kolkata-15 [PAN No.ALJPA 5721 E]	<b>बनाम</b> /V/s.	Income Tax Officer, Wrd-25(2), Bamboovila, 169, A.J.C. Bose Road, Kolkakta-14
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	07-12-2017
घोषणा की तारीख/Date of Pronouncement	31-01-2018

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-19, Kolkata dated 30.03.2016. Penalty levied by Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 29.04.2013 for assessment year 2009-10.

2. At the time of hearing, it was noticed that the neither anybody appeared on behalf of assessee nor any adjournment application was filed. However, we noticed that issue raised by the assessee has been settled by various courts in their judgments. Therefore, we decided to dispose of the appeal after considering the materials

available on records and hearing the Id. DR. Accordingly we proceed to adjudicate the issue.

3. In this appeal, the assessee has challenged the order of CIT(A) whereby the CIT(A) confirmed the order of AO imposing penalty on the assessee u/s 271(1)(c) of the Income Tax Act, 1961 (Act).

4. The facts and circumstances under which penalty u/s 271(1)(c) of the Act was imposed on the assessee by the AO are as follows :-

The Assessee is an individual and declared its income under the head salary. The assessee in its income tax return has not disclosed the salary income received from M/s Wipro Ltd, IBM India Pvt. Limited and interest income. Therefore an addition aggregating of Rs.3,03,716/- was made to the total income of the assessee. In respect of the aforesaid addition made in the course of assessment proceedings, the AO initiated penalty proceedings u/s 271(1)(c) of the Act. The initiation of penalty proceedings was made by the AO by observing as follows:

“Penalty proceedings u/s.271(1)( c) of the Act has been initiated”

5. In the penalty proceedings, the assessee tried to explain that the aforesaid income was not offered to tax due to ignorance of law. This explanation was not accepted in the penalty proceedings and penalty u/s 271(1)(c) of the Act was imposed on the assessee by the AO. The order of AO was confirmed by CIT(A).

6. Aggrieved by the order of CIT(A) the assessee has filed the present appeal before the Tribunal.

7. The learned DR before us relied on the order of authorities below. He left the issue to the discretion of the Bench.

8. We have heard the Id. DR and perused the materials available on record. The facts of the case have already been elaborated in the preceding paragraphs therefore we are not repeating the same for the sake of brevity. At the outset, it was noticed that the show cause notice issued u/s 274 of the Act before imposing penalty does not contain the specific charge against the assessee namely as to whether the assessee

was guilty of having concealed particulars of income or having furnished inaccurate particulars of income. A copy of the show cause notice u/s 274 of the Act was filed before us and perusal of the same reveals that AO has not struck out the irrelevant portion in the show cause notice and therefore the show cause notice does not specify the charge against the assessee as to whether the charge is of concealment of particulars of income or furnishing of inaccurate particulars of income. The same is reproduced for the purpose of ready reference:

*“Have concealed the particulars of your income or ..... furnished inaccurate particulars of such income.”*

8.1. In this regard we note that Hon’ble Karnataka High Court in the case of *CIT vs. SSA’s Emerald Meadows* in **ITA No.380 of 2015** dated 23.11.2015 wherein the Hon’ble Karnataka High Court following its own decision in the case of *CIT vs Manjunatha Cotton and Ginning Factory* (2013) 359 ITR 565 took a view that imposing of penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The Id. Counsel further brought to our notice that as against the decision of the Hon’ble Karnataka High Court the revenue preferred an appeal in SLP in **CC No.11485 of 2016** and the Hon’ble Supreme Court by its order dated 05.08.2016 dismissed the SLP preferred by the department. The Id. Counsel also brought to our notice the decision of the Hon’ble Bombay High Court in the case of *CIT vs Shri Samson Perinchery* in **ITA No.1154 of 2014** dated 05.01.2017 wherein the Hon’ble Bombay High Court following the decision of the Hon’ble Karnataka High Court in the case of *CIT vs Manjunatha Cotton and Ginning Factory* (supra) came to the conclusion that imposition of penalty on defective show cause notice without specifying the charge against the assessee cannot be sustained. It was also noted that the decision of ITAT in the case of *Suvaprasanna Bhattacharya vs ACIT* in **ITA No.1303/Kol/2010** dated 06.11.2015 wherein identical proposition has been followed by the Tribunal.

8.2 We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. We, therefore, hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled. Accordingly, AO is directed. This ground of assessee's appeal is allowed.

9. **In the result, assessee's appeal stands allowed.**

Order pronounced in open court on 31/01/2018

Sd/-  
(न्यायिक सदस्य)  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
Accountant Member

\*Dkp, Sr.P.S

दिनांक:- 31/01/2018 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Sukhendu Ghosh, 20/15A, Seal Lane, Tangra, Kolkata-15
2. प्रत्यर्थी/Respondent-ITO, Ward-25(2), Bamboovilla,169, A.J.C.Bose Rd, Kol-14
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary  
Head of Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता