

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

Before **Shri Aby.T Varkey, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.498/Kol/2016**  
Assessment Year :2007-08

Brij Bhushan Singh C/o D J Shah & Co Kalyan Bhavan, 2 Elgin Road, Kolkata-20 <b>[PAN No.ADIPS 9170 Q]</b>	<b>V/s.</b>	ITO Ward-22(1), 8 <sup>th</sup> Floor, Bamboo Villa, Kolkata-14
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri M.D. Shah,
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	06-02-2018
घोषणा की तारीख/Date of Pronouncement	21-02-2018

**आदेश /O R D E R**

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

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-18, Kolkata dated 27.01.2016. Assessment was framed by ITO Ward-22(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 31.12.2009 for assessment year 2007-08.

Shri M.D. Shah, Ld. Authorized Representative appeared on behalf of assessee and Shri Ariindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. In this appeal the assessee has challenged the order passed by Ld. CIT(A) who confirmed the order of Assessing Officer for imposing the penalty on the assessee u/s 271(1)(c) of the Income Tax Act, 1961 (Act).

3. The facts of the case are that the assessee is an individual & deriving his income from salary, pension & other sources. The assessee filed his return of income for the year under consideration declaring total income of Rs.4,18,393/- only. In the course of assessment proceedings, the AO made certain additions as detailed under :

i) Unexplained deposits in Bank of India, A/c No. 623224 Rs. 1,84,000.00

ii) Unexplained deposits in Syndicate Bank Rs. 3,16,957.00

iii) Unexplained deposits in Bank of India A/c No. 623224 Rs. 2,00,000.00

Thus the sum of Rs.7,00,957/- was added to the total income of the assessee by the AO as income not disclosed. 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 AO imposed penalty holding that the assessee has violated the provision of law enumerated in Section 271(1)(c) of the Act by concealing particulars of income and imposed penalty u/s 271(1)(c) of the Act and Ld.CIT(A) confirmed the order of AO.

4. Aggrieved by this assessee is in appeal before the Tribunal. The Id. Counsel for the assessee submitted before us 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 is placed on record. On perusal of the same it was revealed 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 Id. Counsel for the assessee drew our attention to the decision of the 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 *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. Our attention was also drawn to 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. The Id. DR relied on the order of CIT(A).

5. 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. The plea of the Id. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. Respectfully following the binding of this judgment we therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled. Hence, this ground of assessee's appeal is allowed.

**6. In the result, assessee's appeal is allowed.**

Order pronounced in the open court 21/02/2018

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

Sd/-  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp

दिनांक:- 21/02/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-Brij Bhushan Singh, c/o D J Shah & Co Kalyan Bhavan, 2 Elgin Road, Kolkata-20
2. प्रत्यर्थी/Respondent-ITO, Ward-22(1), 8<sup>th</sup>, FI, Bamboo Vila, Kolkata-14
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।