

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” 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. 434/Kol/2016
Assessment Year: 2012-13

Shriram Insight Share Brokers Ltd. (PAN: CALIO1614E)	Vs.	Joint Commissioner of Income-tax, Range-59 (TDS), Kolkata.
Appellant		Respondent

Date of Hearing	20.02.2018
Date of Pronouncement	28.03.2018
For the Appellant	Shri M. D. Shah, AR
For the Respondent	Shri Arindam Bhattacharjee, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

The appeal filed by the assessee is against the order of Ld. CIT(A)-24, Kolkata dated 31.12.2015 for AY 2012-13.

2. At the outset itself, the Ld. AR brought to our notice that penalty u/s. 271C was imposed by short deduction of TDS u/s. 194J on payments of lease line charges, computer maintenance charge etc. raised in an order u/s. 201(1)/(1A) dated 31.03.2014. According to Ld. AR, the order of AO u/s. 201(1)/1A dated 31.03.2014 on this issue has been found to be legally untenable by this Tribunal on 09.02.2018, in ITA No. 433/Kol/2016 for this relevant AY under consideration and so resultantly, the penalty levied on the foundation of AO's order which is non-existing in the eyes of law, also necessarily has to fail. So, penalty order is “null” in the eyes of law and the appeal of the assessee is allowed.

3. Before we part, we would hasten to add, that the Ld. CIT(A) himself has ordered deletion of penalty, however, did not allow the plea of the assessee in respect to ground no. 1 and 2 before him, which were assailing the decision of the AO in respect of penalty be

levied in violation of Natural justice and limitation. In the light of the aforesaid discussion, we allow the appeal on the ground that AO's order u/s. 201(1)/1A has been set aside being untenable in law, the penalty levied on the basis of AO's order which is not existing in the eyes of law is 'null' in the eyes of law. All other grounds raised by the assessee is not looked into being academic in nature.

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

Order is pronounced in the open court on 28.03.2018

Sd/-
(M. Balaganesh)
Accountant Member

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

Dated : 28th March, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shriram Insight Share Brokers Ltd., C/o, D. J. Shah & Co.
Kalyan Bhavan, 2, Elgin Road, Kolkata-700 020.
2. Respondent – JCIT, Range-59(TDS), Kolkata.
3. The CIT(A) Kolkata.
4. CIT Kolkata
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary