

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'D' BENCH, KOLKATA**

**[Before Sri P.M. Jagtap, Vice President, KZ & Sri S.S. Viswanethra Ravi, Judicial Member]**

**I.T.A. No. 663/Kol/2018**  
Assessment Year: 2006-07

**Smt. Sheila Sen.....Appellant**  
**L/H. of Late Bimalendu Sen**  
**16, Convent Road**  
**Kolkata - 700 014**  
**[PAN : ALPPS 5849 B]**

**Income Tax Officer, Ward-2(1), Kolkata.....Respondent**

**Appearances by:**

*Shri Soumitra Choudhury, Advocate, & Shri Anirban Gupta, Advocae appeared on behalf of the assessee.*

*Shri Sankar Halder, JCIT Sr. D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : January 2<sup>nd</sup>, 2019  
Date of pronouncing the order : January 16<sup>th</sup>, 2019

**O R D E R**

**Per S.S. Viswanethra Ravi, JM :-**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) - 1, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 23/02/2018, for the Assessment Year 2006-07.

2. It is noted from the record that the assessee challenged the order dt. 18/03/2014, passed u/s 271(1)(c) of the Act, for the Assessment Year 2006-07, but, however, the Id. CIT(A) passed the order as if the assessee challenged the order passed u/s 143(3)/147 of the Act.

3. The Id. A/R submitted that it was a mistake on the part of the Id. CIT(A) deciding the issue which was not at all relevant nor raised before him in the 1<sup>st</sup> Appellate Proceedings. Further he submits that the issue raised before this Tribunal is squarely covered by the decision of the Hon'ble Calcutta High Court in

the case of *Pr. CIT vs. Dr. Murari Mohan Koley in ITAT No. 306 of 2017; G.A. No. 2968 of 2017, dt. 18/07/2018*. The ld. A/R, placed on record, the said order and referred to the observations of the Hon'ble High Court at page no. 6, wherein it was held as follows:-

*"We find that there was no specific charge against the assessee in the notice. Revenue has missed out their opportunity to subject the assessee to the penalty proceeding by not issuing a proper notice. No specific case has been made out by the Revenue as to why the matter should be remanded except that the assessee had not participated properly in the assessment proceedings but for that reason best judgment assessment has been made and the income, which had escaped assessment has been added to the income of the assessee. It was incumbent upon the Revenue to make out a specific case for imposition of penalty, on which count the Revenue has failed.*

*Under such circumstances, we do not find any reason to interfere with the Tribunal's order. The Tribunal's order does not suffer from any error of law. No substantial question of law is involved in this appeal. Hence, the same is dismissed. Hence, stay petition is also dismissed."*

4. He further argued that the Assessing Officer did not strike out the relevant portion on which he initiated the penalty proceedings u/s 271(1)(c) of the Act. The penalty proceedings initiated by the Assessing Officer is not maintainable as it was initiated on defective notice.

5. The ld. D/R, opposed the same. He submits that the ld. CIT(A) by mistake disposed off the appeal as if the grounds raised challenging the assessments completed u/s 143(3)/147 of the Act. The ld. D/R did not dispute the fact that the assessee actually challenged the penalty order passed by the Assessing Officer u/s 271(1)(c) of the Act, before the ld. CIT(A).

6. Therefore, taking into consideration the submission of the ld. A/R and D/R, we are of the opinion that since there was no finding in respect of the order challenged before the ld. First Appellate Authority, relating to the issue of penalty u/s 271(1)(c) of the Act, we deem it proper to remand the matter to the file of the ld. CIT(A), by holding that the issue on hand is covered by the decision of the Hon'ble Calcutta High Court in the case of *Dr. Murari Mohan Koley (supra)* and we direct the ld. CIT(A) to consider the same and pass order in terms of the decision of the Hon'ble High Court (*supra*) within two months from the date of appearance of the assessee or his authorized representative before him. The assessee is directed

to appear before the Id. CIT(A), within 20 day from the receipt of this order, take notice and thereafter co-operate for early disposal of the appeal.

7. In the result, appeal of the assessee is allowed for statistical purposes

***Kolkata, the 16<sup>th</sup> day of January, 2019.***

**Sd/-**  
**[P.M. Jagtap]**  
Vice President

**Sd/-**  
**[S.S. Viswanethra Ravi]**  
Judicial Member

Dated : 16.01.2019  
{SC SPS}

*Copy of the order forwarded to:*

**1. Smt. Sheila Sen**

***L/H. of Late Bimalendu Sen***  
***16, Convent Road***  
***Kolkata - 700 014***

**2. Income Tax Officer, Ward-2(1), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches