

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

[Before Shri P.M. Jagtap, Hon'ble Vice President-KZ & Shri Aby T. Varkey, Hon'ble Judicial Member]

I.T.A. No. 1814/Kol/2019

Assessment Year: 2015-16

Hari Prasad Bajoria.....Appellant
Nutangank, Bankura
West Bengal - 722 101
[PAN: ADMPB 1160 F]

Vs.

Income Tax Officer, Ward-3(1), Bankura.....Respondent

I.T.A. No. 1815/Kol/2019

Assessment Year: 2015-16

Sangeeta Bajoria.....Appellant
Keora Gulab, Station More,
Nutangank, Bankura
West Bengal - 722 101
[PAN: ANBPB 1601 N]

Vs.

Income Tax Officer, Ward-3(1), Bankura.....Respondent

Appearances by:

Shri Amit Agarwal, Advocate, appeared on behalf of the assessee.

Shri Supriyo Pal, JCIT, Sr. D/R, appearing on behalf of the Revenue

Date of concluding the hearing : October 25th, 2019

Date of pronouncing the order : October 25th, 2019

O R D E R

Per Aby T. Varkey, JM :-

Both these appeals filed by the assessee are directed against the common order passed by Ld. CIT(A) - Durgapur, dated 17/05/2019, confirming the penalty imposed by the AO u/s 271(1)(c) of the Income Tax Act, 1961.

2. Though the assesseees are different, and the impugned orders are different, as the issues arising in both these appeals are identical, they are heard together and disposed off by way of this common order.

3. We have heard the arguments of the respective parties and also perused the relevant materials available on record.

4. The ld. counsel for the assessee has raised a common preliminary objection challenging the penalty imposed u/s 271(1)(c) on the ground that the notice

issued initiating the penalty proceedings being defective, the penalty imposed in pursuance of such defective notice is not sustainable in law. He has placed on record, a copies of the said notices issued by the A.O. and pointed out that the irrelevant portion having been not struck off by the A.O. in the said notices, the exact charge/s against the assessee as to whether he concealed the particulars of his income or furnished inaccurate particulars of such income was not clear. In support of his contention, the Learned counsel for the assessee has relied upon the decision of the Coordinate Bench in the case of *Jeetmal Choraria vs ACIT* rendered vide its order dated 01.12.2017 passed in *ITA No. 956/Kol/2016* wherein a similar issue has been decided by the Tribunal after taking into consideration, the relevant decision of the different High Courts vide paragraph no. 14 and 15 of its order which read as under:

*“From the aforesaid discussion it can be seen that the line of reasoning of the Hon’ble Bombay High Court and the Hon’ble Patna High Court is that issuance of notice is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done. Mere mistake in the language used or mere non-striking of the inaccurate portion cannot by itself invalidate the notice. The Tribunal Benches at Mumbai and Patna being subordinate to the Hon’ble Bombay High Court and Patna High Court are bound to follow the aforesaid view. The Tribunal Benches at Bangalore have to follow the decision of the Hon’ble Karnataka High Court. As far as benches of Tribunal in other jurisdictions are concerned, there are two views on the issue, one in favour of the assessee rendered by the Hon’ble Karnataka High Court in the case of *Manjunatha Cotton & Ginning (supra)* and other of the Hon’ble Bombay High Court in the case of *Smt. Kaushalya*. It is settled legal position that where two views are available on an issue, the view favourable to the assessee has to be followed. We, therefore, prefer to follow the view expressed by the Hon’ble Karnataka High Court in the case of *Manjunatha Cotton & Ginning (supra)*.*

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 ld. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We, therefore, hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled.”

4. In our opinion, the decision rendered by the Coordinate Bench in the case of *Jeetmal Choraria vs ACIT (supra)* is squarely applicable in the present case and

even the Learned DR has not disputed this aspect of the matter. We, therefore, respectfully following the said decision of the Coordinate Bench quash the impugned penalty imposed by the Assessing Officer under section 271(1)(c) of the Act and confirmed by the Ld. CIT(A).

5. In the result, both the appeals of the assessee are allowed.

Kolkata, the 25th day of October, 2019.

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

Sd/-
[Aby T. Varkey]
Judicial Member

Dated :25.10.2019
{SC SPS}

Copy of the order forwarded to:

- 1. Hari Prasad Bajoria**
Nutangank, Bankura
West Bengal - 722 101
- 2. Income Tax Officer, Ward-3(1), Bankura**
- 3. Sangeeta Bajoria**
Keora Gulab, Station More,
Nutangank, Bankura
West Bengal - 722 101
4. CIT(A)-
5. CIT- ,
6. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches