

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

**[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member & Shri Aby T. Varkey, Hon'ble Judicial Member]**

**I.T.A. No. 745/Kol/2019  
Assessment Year: 2014-15**

***Bihari Lal Purohit.....Appellant***  
***13, Narayan Prasad Babu Lane***  
***Burrabazar***  
***Kolkata - 700 007***  
***[PAN: BBPPP 9554 D]***

***Vs.***

***Asstt. Commissioner of Income Tax, Circle-43, Kolkata.....Respondent***

**Appearances by:**

*Shri Rajeev Kumar, 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 31<sup>st</sup>, 2019  
Date of pronouncing the order : October 31<sup>st</sup>, 2019

**O R D E R**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 13, Kolkata, (hereinafter the “ld.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 21/08/2018, for the Assessment Year 2014-15.

2. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

3. The ld. counsel for the assessee has raised a 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 copy of the said notice issued by the A.O. u/s 271(1)(C) of the Act, dt. 15/11/2016, 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 Id. 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 Ld. 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, appeal of the assessee is allowed.**

***Kolkata, the 31<sup>st</sup> day of October, 2019.***

*Sd/-*  
**[Aby T. Varkey]**  
 Judicial Member

Dated : 31.10.2019  
 {SC SPS}

*Sd/-*  
**[J. Sudhakar Reddy]**  
 Accountant Member

*Copy of the order forwarded to:*

**1. Bihari Lal Purohit**  
**13, Narayan Prasad Babu Lane**  
**Burrabazar**  
**Kolkata - 700 007**

**2. Asstt. Commissioner of Income Tax, Circle-43, Kolkata**

3. CIT(A)-

4. CIT- ,

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

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches