

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

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member)**

**ITA No. 2044/Kol/2018**  
Assessment Year: 2008-09

**Arun Kumar Bose.....Appellant**

**Proprietor of Techno Power**

**G.T. Road (West)**

**Gopalpur**

**P.O. Asansol**

**Dist. Paschim Bardhaman (W.B.)**

**PIN - 713304**

**[PAN : ADIPB 7015 M]**

**Vs.**

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

**Appearances by:**

*None, appeared on behalf of the assessee.*

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

Date of concluding the hearing : January 23<sup>rd</sup>, 2020

Date of pronouncing the order : February 19<sup>th</sup>, 2020

**ORDER**

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

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – Asansol, (hereinafter the “Id.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 16/07/2018, for the Assessment Year 2008-09, wherein he has confirmed the penalty levied u/s 271(1)(c) of the Act.

2. None appeared on behalf of the assessee. There is no petition for adjournment either. Under these circumstances, we dispose off the case *ex-parte* on merits *qua* the assessee after hearing the Id. Departmental Representative.

3. Heard the Id. D/R. The assessee has challenged the penalty imposed u/s 271(1)(c) of the Act, by the Assessing Officer and confirmed by the Id. CIT(A). We find that the notice issued for initiating the penalty proceedings is defective. The penalty imposed in pursuance of such defective notice is not sustainable in law. A copy of the said notice issued by the A.O. issued u/s 274 r.w.s. 271 of the Act, dt. 23/12/2010, is placed on record and is extracted for ready reference:-

आ०सू०सि०- 29/I.T.N.S.-29  
आयकर अधिनियम, 1961 के धारा 271 के साथ पढ़ी गयी धारा 274 के अधीन सूचना  
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF  
THE INCOME TAX ACT, 1961

सवा में / To

Arun Bose  
G. T. Rd (West)  
Chopalpur  
Asansol

आयकर कार्यालय/Income-tax Office

1-T.O Wd 1(2) / ASL

तारिख/Dated. 23/12/10

PAN - ADIPB 7015M

चूंकि कर निर्धारण वर्ष ..... के सन्वत् में नरे होने वाली कार्रवाई  
के दौरान मुझे प्रतीत होता है कि आपने :-

Whereas in the course of proceedings before me for the assessment  
year ~~2008-09~~ it appears to me that you :-

\*बिना उचित कारण के यह आय विवरणी नहीं दी है जो आपको भारतीय आयकर  
अधिनियम, 1922 की 22(1)/22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थी या जो  
आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961 की धारा 139(2)/148 के  
अधीन दी गई सूचना सं० ..... ता० ..... अनुसार दाखिल करनी थी  
अथवा उचित कारण के बिना आपने दिए गए समय के अन्दर और उक्त धारा 139(1) या इस  
प्रकार की सूचना द्वारा अपेक्षित रीति से विवरणी नहीं दी है।

\*have without reasonable cause failed to furnish me return of income  
which you were required to furnish by a notice given under section 22(1)/22(2)/  
34 of the Indian Income-tax Act, 1922 or which you were required to furnish  
under section 139(1) or by a notice given under section 139(2)/148 of the Income-  
tax Act, 1961, No. .... dated ..... or have without  
reasonable cause failed to furnish it within the time allowed and the manner  
required by the said section 139(1) or by such notice.

क०पू०उ० / P.T.O.

2

\*बिना उचित कारण के अपने भारतीय आयकर अधिनियम, 1922 की धारा 23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूची सं० ..... ता० ..... का अनुपालन नहीं किया किया है।

\* have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961


No. .... Dated .....

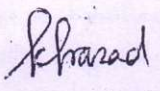
\*अपनी आय के ब्यौरे छिपा लिए है या ..... इस प्रकार की आय के ब्यौरे गलत दिए हैं।

\* have concealed the particulars of your income or ..... furnished inaccurate particulars of such income.

आपको एतद्द्वारा सूचित किया जाता है कि ता० ..... 20..... की ..... बजे अ०म०/पू० न० में आप मेरे कार्यालय में उपस्थित हो और कारण बताए कि आयकर अधिनियम 1961 की धारा 271 के अधीन आप पर दण्ड लगाने का आदेश क्यों न दिया जाए। यदि आप स्वयं उपस्थित होकर या प्रधिकृत प्रतिनिधि द्वारा सुनवाई के लिए दिए गए अवसर का लाभ नहीं उठाना चाहते तो उक्त तारीख को या उक्त पूर्व लिखकर इत्तफा कारण बताए, जिस पर धारा 271 के अधीन कोई ऐसा आदेश देने के पूर्व विचार किया जाएगा।

You are hereby requested to appear before me at 1. T.O. Ward 1(2) / 105 L 12:00 A.M./P.M. on 18.01.2010 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271. (1) (e)

  
 (मुहर)  
 (Seal)

  
 आयकर अधिकारी  
 Income-tax Officer  
 पी. के. प्रसाद  
**P. K. PRASAD**  
 आयकर अधिकारी, बार्ड-१(२) आसनसोल  
 Income Tax Officer - Ward-1(2) Asansol

\* जो शब्द या परे अपसंस्कृत शब्द उन्हें काटें और ।  
 \* Delete inappropriate words and paragraphs.

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3.1. The irrelevant portion have not been struck off by the A.O. in the notice. The exact charge/s against the assessee as to whether he concealed the particulars of his income or furnished inaccurate particulars of such income is not clear. It is not clear whether the notice was issued for levy of penalty for failure to comply with a notice u/s

142(1)/143(2) of the Income Tax Act, 1961. While the notice appears to be for furnishing inaccurate particular of income the penalty was levied for concealment of income.

3.2. The Hon'ble Jurisdictional 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*, judgment dt. 18<sup>th</sup> July, 2018, held as follows:-

*"10. 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 the Hon'ble Karnataka High Court in the case of of [CIT vs 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 learned DR relied on the order of the CIT(A).*

*11. 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. "*

*Mr. Chowdhury in course of argument has urged us to remand the matter before the assessing officer. According to him, this was a technical flaw, which the Revenue must be given a chance to cure. The reason why the penalty order was not sustained by the Tribunal appears from the passages of the decision of the Tribunal quoted earlier in this judgement.*

*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.*

*There shall be no order as to costs.*

4. The proposition of law laid down in the above case-law is squarely applicable in the present case. We, therefore, respectfully following the said decision of the Hon'ble Jurisdictional High Court and 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 19<sup>th</sup> day of February, 2020.***

*Sd/-*  
**[S.S. Godara]**  
 Judicial Member

Dated : 19.02.2020  
 {SC SPS}

*Copy of the order forwarded to:*

1. **Arun Kumar Bose**  
**Proprietor of Techno Power**  
**G.T. Road (West)**  
**Gopalpur**  
**P.O. Asansol**  
**Dist. Paschim Bardhaman (W.B.)**  
**PIN - 713304**

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

3. **CIT(A)-**

4. **CIT-** ,

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

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

True copy  
 By order

Assistant Registrar  
 ITAT, Kolkata Benches