

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

**(Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri Aby T. Varkey, Hon'ble Judicial Member)  
[VIRTUAL COURT HEARING]**

**ITA No. 1820/Kol/2019  
Assessment Years: 2012-13**

**Millenium Concrete Creation Pvt. Ltd.....Appellant**  
**Subhash Pally**  
**Dalkhola**  
**West Bengal - 733 201**  
**[PAN : AADCM 9921 G]**

**Vs.**

**Deputy Commissioner of Income Tax, Circle-2, Jalpaiguri..... Respondent**

**Appearances by:**

*Shri Subash Agarwal, Advocate, appeared on behalf of the assessee.*

*Shri Dhrubojyoti Ray, Addl. CIT D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : July 22<sup>nd</sup>, 2020

Date of pronouncing the order : August 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) – Jalpaiguri, (hereinafter the “ld.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 14/12/2018, for the Assessment Year 2012-13, wherein, he confirmed the penalty levied u/s 271(1)(c) of the Act, by the Assessing Officer.

2. At the outset we find that there is a delay of 122 (One Hundred Twenty Two) days in filing of this appeal by the assessee. After perusing the petition for condonation, we are convinced that the assessee was prevented by sufficient cause from filing the appeal in time. Hence the delay is condoned and the appeal is admitted.

3. The sole grievance of the assessee is that the notice issued u/s 274 of the Act, is defective as it does not spell out the charge against the assessee i.e., as to whether the assessee has furnished inaccurate particulars of income or has concealed his income, rendering the penalty order passed u/s 271(1)(c) of the Act, to be bad in law.

4. The ld. D/R opposed the contention of the assessee and submitted that the assessee has never appeared before the Assessing Officer nor before the ld. CIT(A) and order had to be passed u/s 144 of the Act by the Assessing Officer during the assessment proceedings and an *ex-parte* order has to be passed in the proceedings u/s 271(1)(c) of the Act. He further pointed out that the assessee had failed to appear before the ld. CIT(A) also and under these circumstances, at best, the issue should be remanded to the file of the Assessing Officer or the ld. CIT(A) for adjudication of this issue.

4.1. The Id. Counsel for the assessee, in reply submitted that the issue as to whether the notice issued u/s 274 r.w.s. 271(1)(c) of the Act on 28/03/2015 is a valid notice under law or not is a jurisdictional issue and the assessee can take it up at any point of time. He filed a copy of the said notice and submitted that the inapplicable portions were not struck off thus making the charge for levy of penalty ambiguous in such notice.

5. After hearing rival contentions, we find that the notice issued u/s 274 r.w.s. 271(1)(c) of the Act dt. 28/03/2015, did not specify the charges against which the penalty was sought to be imposed. The penalty imposed in pursuance of such defective notice is not sustainable in law. 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.*

6. 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 as confirmed by the Ld. CIT(A).

7. **In the result, appeal of the assessee is allowed.**

***Kolkata, the 19<sup>th</sup> day of August, 2020.***

**Sd/-**  
**[Aby T. Varkey]**  
 Judicial Member  
 Dated : 19.08.2020  
*{SC SPS}*

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

*Copy of the order forwarded to:*

1. **Millenium Concrete Creation Pvt. Ltd**  
**Subhash Pally**  
**Dalkhola**  
**West Bengal – 733 201**

2. **Deputy Commissioner of Income Tax, Circle-2, Jalpaiguri**

3. CIT(A)-

4. CIT- ,

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

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches