

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

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

ITA No. 387/Kol/2020
Assessment Years: 2009-10

ITA No. 388/Kol/2020
Assessment Years: 2010-11

ITA No. 389/Kol/2020
Assessment Years: 2011-12

Income Tax Officer, Ward-1(1), Siliguri.....Appellant

Vs.

Sri Alit Kumar Sarkar.....Respondent

*C/o J.N. Sarkar and Co.
T/14, Bidhan Market
Siliguri – 734 001
[PAN : AIWPS 9731 Q]*

Appearances by:

*Shri Subhash Agarwal, Advocate, appeared on behalf of the assessee.
Smt. Ranu Biwas, Addl.CIT D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : September 25th, 2020

Date of pronouncing the order : November 25th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

All these appeals filed by the revenue are directed against the separate but identical orders of the Learned Commissioner of Income Tax (Appeals) – Siliguri, (hereinafter the “ld.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 13/02/2020, for the Assessment Years 2009-10, 2010-11, 2011-12, wherein, he cancelled the penalty levied, u/s 271(1)(c) of the Act by the Assessing Officer .

2. There is a delay of 67 (sixty seven) days in filing of these revenue appeals. After perusing the petitions for condonation for delay, we are convinced that the revenue was prevented by sufficient cause in filing the appeals in time. Hence, we condone the delay and admit these appeals.

3. After hearing rival contentions, we find that the ld. CIT(A), in this case has cancelled the penalty of Rs.1,31,286/-, for the Assessment Year 2009-10, Rs.32,421/- for the Assessment Year 2010-11 and Rs.63,753/- for the Assessment Year 2011-12, levied u/s 271(1)(c) of the Act, on the ground that in the separate notice issued to the assessee, u/s 274/271 of the Act, dt. 26/02/2015, for all the three years were defective,

as the charge for levy of penalty is not specified. On perusal of these notice, we find that the Assessing Officer has not cancelled or struck off any clause or paragraph in that notice. Hence, the reason for which the notice is given is vague. The argument of the Id. D/R that the charge has been specified in the assessment order, could not cannot be accepted. The charge has to be specific in the notice. The defect in the notice makes the levy of penalty bad in law.

3.1. The Id. CIT(A) has cancelled the levy of penalty on the ground that the notice is a defective notice. 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. 18th 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 propositions of law laid down in the above case-law are squarely applicable in the present case. We, therefore, respectfully following the said decision of the Hon'ble Jurisdictional High Court, and uphold the order of the Id. CIT(A).

5. **In the result, appeals of the revenue are dismissed.**

Kolkata, the 25th day of November, 2020.

Sd/-
[Aby T. Varkey]
 Judicial Member
 Dated : 25.11.2020
{SC SPS}

Sd/-
[J. Sudhakar Reddy]
 Accountant Member

Copy of the order forwarded to:

1. Sri Alit Kumar Sarkar
C/o J.N. Sarkar and Co.
T/14, Bidhan Market
Siliguri – 734 001

2. Income Tax Officer, Ward-1(1), Siliguri

3. CIT(A)-

4. CIT- ,

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

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches