

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA
(Virtual Court)**

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

**I.T.A. No. 1887/Kol/2019
Assessment Year: 2015-16**

**Rakesh Agarwal.....Appellant
[PAN: ADRPA 1425 B]**

Vs.

ITO, Ward-2(2), Siliguri.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Sh. Supriyo Paul, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : December 3rd, 2020

Date of pronouncing the order : December 9th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (the 'Act') against the order of the Learned Commissioner of Income Tax (Appeals), Siliguri, [hereinafter the "CIT(A)"], passed u/s. 250 of the Act dated 19.06.2019 for the Assessment Year 2015-16.

2. None appeared on behalf of the assessee despite issue of notice. There is no petition for adjournment either. Under these circumstances we dispose off the case *ex-parte* qua the assessee after hearing the ld. D/R.

3. Heard ld. D/R. The assessment in this case has been computed u/s 143(3) of the Act on 22.12.2017, determining the total income of the assessee u/s 44AD of the Act. 8% of the total deposits made in the assessee's bank account during the financial year 2014-15 were estimated as the income. Penalty u/s 271(1)(c) of the Act was levied. The assessee's contention is that no penalty can be levied, when income is determined on estimate basis. In our view, the penalty order does not specify the charge on which penalty is being levied i.e. penalty for concealment of income or furnishing inaccurate

particular of income. While the assessment order states that proceedings u/s 271(1)(c) of the Act have been initiated for concealment of income, the penalty order states that the penalty has been levied in respect of concealed as well as furnishing inaccurate particular of income. Moreover, the income is assessed on estimate basis. Under these circumstances we cancel the penalty levied and allow the appeal of the assessee.

4. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 9th December, 2020.

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

Dated: 09.12.2020

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Rakesh Agarwal, C/o. Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700 069.***
2. ***ITO, Ward-2(2), Siliguri.***
3. CIT(A), Siliguri. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches