

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

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 2553/Kol/2019
Assessment Year: 2004-05**

H.L. Mondal.....Appellant
[PAN: AADFH 2723 E]

Vs.

ITO, Ward-23(2), Hooghly.....Respondent

Appearances by:

Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : March 11th, 2021

Date of pronouncing the order : March 24th, 2021

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)-6, Kolkata [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 12.09.2019 for the Assessment Year 2004-05.

2. After hearing rival contentions we find that this is a case where the AO has not specified the charge in his notice issued for levy of penalty u/s 271(1)(c) of the Act. The Hon'ble Calcutta High Court in the case of *PCIT vs. Sri Bijoy Kumar Agarwal in ITAT 272 of 2017, GA 2455 of 2017* has held as follows:

"There is no merit in this intended appeal. The impugned notice under Section 272(1)(c) does not specify which of the two contraventions, the assessee is guilty of.

*For those reasons, the notice is bad. We are supported in our view by the decision of the Supreme Court in *Amrit Foods Versus Commissioner of Central Excise, U. P. reported in (2005) 13 SCC 419, a Division Bench of our Court in Principal Commissioner of Income Tax - 19, Kolkata Versus Dr. Murari Mohan Koley, ITAT No. 306 of 2017 (so far unreported) decided on 18th July, 2018, judgements of the Karnataka and Bombay High Courts referred to in the preceding judgement and an unreported judgement of the Division Bench in Principal CIT - 1, Kolkata Versus M/S. SRMB Srijan Ltd. made on 26th February, 2019 on the same point.**

We make it absolutely clear that we have only gone into the question of technical defect in the notice stated to have been issued under Section 271(1)(c) read with Section 274 of the Income Tax Act, 1961 and the consequences thereof.

We have not gone into any other issue.

Hence, this appeal (ITAT No. 272 of 2017) and the stay application (GA No. 2455 of 2017) are dismissed."

2.1. Similar judgement by the Hon'ble High Court in the case of *PCIT-1 vs. Dr. Murari Mohan Koley in ITAT No. 2018 (9) TMI 1-Calcutta High Court judgement dated 18.07.2018* held as follows:

"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."

3. Applying the propositions of law laid down by the jurisdictional High Court to the facts of this case we quash the order passed u/s 271(1)(c) on the ground that notice issued for levy of penalty has not specified the charge.

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

Kolkata, the 24th March, 2021.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated: 24.03.2021

Bidhan (P.S.)

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. ***H.L. Mondal, 71, G.T. Road, Rishra, Hooghly, PIN-712 248.***
2. ***ITO, Ward-23(2), Hooghly.***
3. CIT(A)- 6, Kolkata (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches