

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri P. M. Jagtap, Vice President & Shri A. T. Varkey, Judicial Member]

I.T.A. No. 670/Kol/2019
Assessment Year: 2005-06

Manimaya Holdings Pvt. Ltd. (PAN: AACCM0598E)	Vs	Income-tax Officer, Wd-12(3), Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	11.08.2021
Date of Pronouncement	18.08.2021
For the Appellant	None appeared
For the Respondent	Shri Supriyo Pal, D.R

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-24, Kolkata dated 24.01.2019 for AY 2005-06 against the confirmation of penalty order passed u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. None appeared for the assessee. However it is noted that the main grievance of the assessee is against the ex parte order passed by the Ld. CIT(A) without hearing the assessee. According to the assessee, the penalty order passed by the AO (ITO, Ward-12(3), Kolkata) is bad in law. According to assessee, the AO has initiated the penalty proceedings u/s. 271(1)(c) of the Act for concealment of income and furnishing of inaccurate particulars of income which fact has been noted by the Ld. CIT(A) in para 3 of the impugned order. According to the assessee since there is legal infirmity in the show cause notice, the consequent order of the AO imposing penalty itself is bad in law as held by the Hon’ble High Courts in plethora of decisions. Therefore, according to the assessee, the penalty order itself is bad in law. However, it is noted that the Ld. CIT(A) has not decided the legal issue raised by the assessee as ground no. one (1) wherein the assessee has assailed the decision of the AO passed u/s. 271(1)(c) of the Act as bad in law which encompasses the legal issue of infirmity in the notice issued prior to levy of penalty u/s 271(1)(c) of the Act. According

to the assessee, it did not receive any notice of hearing and we note that the Ld. CIT(A) has not mentioned about any dates of hearing, therefore, in the interest of justice and fair-play, we set aside the order of the Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A) for fresh adjudication of the appeal which emanated from the penalty imposed by the ITO, Ward-12(3), Kolkata vide order dated 31.01.2018 for AY 2005-06.

3. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 18th August, 2021.

Sd/-

(P. M. Jagtap)
Vice President

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 18th August, 2021

Jd, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Manimaya Holdings Pvt. Ltd., 3rd floor, The Millenium, 235/2A, AJC Bose Road, Minto Park, Kolkata-700 020.
2. Respondent – ITO, Ward-12(3), Kolkata
3. CIT(A)-24, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
