

IN THE INCOME TAX APPELLATE TRIBUNAL "A"
(Virtual Court Hearing) BENCH KOLKATA

**Before Shri P. M. Jagtap, Vice-President and
Shri Partha Sarathi Choudhury, Judicial Member**

I.T.A. No.560/Kol/2020
Assessment Year: 2009-10

Vinay Gupta.....Appellant

C/o S.N. Ghosh & Associates, Advocates,
2, Garstin Place, 2nd Floor, Suite No.203,
Off Hare Street, Kolkata-1.
[PAN:ADCPG1931B]

vs.

DCIT, Circle-28, Kolkata.....Respondent

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the appellant.

Shri Biswanath Das, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 10, 2021

Date of pronouncing the order : November 11, 2021

ORDER

Shri Partha Sarathi Choudhury, Judicial Member:

This appeal preferred by the assessee emanates from the order of Ld. CIT(A)-8, Kolkata dated 24.08.2020 for the assessment year 2009-10 u/s 271(1)(c) of the Act as per the grounds of appeal on record.

2. The sole grievance of the assessee in this case is the imposition of penalty u/s 271(1)(c) of the Act.

3. At the very outset, the Ld. Counsel for the assessee submitted that the charge for imposition of penalty is not specific and that the Assessing Officer has failed to arrive at the satisfaction as to which charge the penalty u/s 271(1)(c) of the Act should be levied on the assessee whether for concealment of income or for furnishing of inaccurate particulars of income. That bringing our attention to the penalty notice annexed at page 17 of the paper-book, which is as follows:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Aayakar Bhawan, Dakshin, 2, Gariahat Road (South), Kolkata- 700 068

PAN: ADCPG1931B

Dated : 28/11/2013

To
Shri Vinay Gupta
689, Block-O,
New Alipore,
Kolkata- 700 053

(PENALTY NOTICE U/S.271(1)(c) OF THE I.T. ACT, 1961)

Whereas in the course of proceedings before me for the assessment year 2009-10 It appears to me that you :

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961 No. dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income Tax Act, 1922 or under Section 142(1)/143(2) of the Income-tax Act, 1961.

* have concealed the particulars of your Income or furnished inaccurate particulars of such Income.

You are hereby requested to appear before me at 2-30 P.M. on 05/02/2014 and show cause why an order imposing a penalty on you should not be made under 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section 271.



Use appropriate words and paragraphs.

Assessing Officer

मधुमिता दास, आ.स.स.
MADHUMITA DAS, I.R.S.
सहायक आयकर आयुक्त, सर्किल-२८, कोल.
Asstt. Commissioner of Income Tax
Circle-28, Kolkata

4. Therefore, in the afore-stated notice, the Assessing Officer has not specifically stated in which limb of section u/s 271(1)(c) of the Act the penalty shall be levied on the assessee whether for concealment of income or for furnishing of inaccurate particulars of income. It is the crucial facet of natural justice that the assessee should be given an opportunity to defend his case and he can do so only if he is made aware of the charge on

which he has been proceeded against by the Department. It is the inherent right of the assessee to defend his case. The Hon'ble Calcutta High Court in the case of CIT vs. The Ganges Manufacturing Co. Ltd. ITA No.49/Kol/13 dated 14.03.2014 wherein it was observed that the Tribunal by the impugned order held that the assessee must be made aware of the charge for which the penalty is sought to be imposed. In the absence of any specific charge, the Tribunal held, the order of imposition of penalty was vitiated and accordingly the penalty order was quashed. The aforesaid opinion of the Tribunal was affirmed by the Hon'ble Calcutta High Court by observing as follows:

“In the present context, the Ld. Assessing Officer did not specify the nature of charge on the appellant but simply levied penalty with a predetermined mindset. Thus, the Ld. Assessing Officer is caught in the paradox of his own making which renders the impugned order imposing penalty passed u/s. 271(1)(c) of the Act ex facie null in law and ab initio void. The Hon'ble Gujarat High Court in the case of NEW SORATHIA ENGINEERING CO. -VS- C.I.T. (2006) 282 ITR 642 (GUJ) held that where penalty order and order of Commissioner (Appeals) showed that no clear-cut finding had been reached as to whether penalty under section 271(1)(c) was being levied for concealment of particulars of income by the assessee or whether any inaccurate particulars of income had been furnished, order of penalty could not be sustained. Thus, as in the present context, there is no evidence adduced on record to justify the satisfaction of the Ld. Assessing Officer in respect of the charge of furnishing of inaccurate particulars of income or of concealment by the appellant prior to the imposition of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 and accordingly, the order imposing penalty being ultra vires is liable to be cancelled.”

5. We further rely on the Hon'ble Karnataka High Court decision in the case of C.I.T. -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565 (KAR) wherein it has been held that notice u/s. 274 of the Act should specifically state as to whether penalty which is proposed to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income. It was trite that no penalty can be imposed without specifying which limb of section 271(1)(c) of the Act would be applicable. It was held in the case of P.C.I.T. -VS- BASANTI PROPERTIES P. LTD. (ITA NO. 14 OF 2019 DATED 26-02-2019) (CAL) that the charge against the assessee in the notice u/s 274 of the Act has to be specific, in absence of which the penalty is not maintainable. We are of the considered view that since in the notice u/s 274 of the Act the charge was not specified and the Assessing Officer has not arrived at the proper satisfaction as to which limb, he was willing to impose penalty on the

assessee, in such a scenario, the levying of penalty and the entire process is vitiated, bad in law and the penalty thus liable to be quashed. We order accordingly.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 11.11.2021.

Sd/-
[P. M. Jagtap]
Vice-President

Sd/-
[Partha Sarathi Chaudhury]
Judicial Member

Dated: 11.11.2021.

RS

Copy of the order forwarded to:

1. Vinay Gupta
2. DCIT, Circle-28, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches