

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 24/KOL/2020
Assessment Year: 2014-2015**

***Mr. Arun Kumar Bhalotia,.....Appellant
Legal Heir of Smt. Aruna Bhalotia (since deceased),
113/1B, Hazra Road, Kolkata-700026
[PAN: AEEP3012R]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-10(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Amit Agarwal, A.R., appeared on behalf of the
assessee*

*Shri Vijay Kumar, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : January 05, 2023

Date of pronouncing the order : January 05, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-4, Kolkata dated 22.10.2019 passed for A.Y. 2014-15.

2. The solitary grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the penalty of Rs.3,47,337/-, which was imposed by the ld. Assessing Officer under section 271(1)(c) of the Income Tax Act.

3. The ld. Counsel for the assessee, at the very outset, submitted that there is a defect in the show-cause notice, which has been recognized by the ld. 1st Appellate Authority also in the finding recorded in paragraphs no. 3 & 4. However, ld. CIT(Appeals) has ignored the decision of the Hon'ble Jurisdictional High Court even after taking cognizance of them and preferred to rely upon the decision of the Hon'ble Madras High Court.

4. On the other hand, ld. D.R. relied upon the orders of Revenue Authorities below.

5. We have duly considered the rival contentions and gone through the record carefully. There is no dispute with regard to the fact that in the show-cause notice issued under section 274 of the Income Tax Act inviting explanation of the assessee as to why penalty under section 271(1)(c) be not imposed upon him. The ld. Assessing Officer has not specified the charge i.e. whether it is being issued for furnishing inaccurate particulars or for concealing the particulars of income. The ld. CIT(Appeals) in its finding has admitted that defect is there. He also took note of the judgment of the

Hon'ble Calcutta High Court but thereafter he gave preference to the decision of the Hon'ble Madras High Court in the case of Sundaram Finance Limited -vs.- CIT reported in 353 ITR 375.

6. On the other hand, the following decisions of -

- (i) *CIT -vs.- Yachio Engineering Co. Limited- ITAT No. 21/2020, order dated 04.03.2022 (Calcutta HC);*
- (ii) *PCIT -vs.- Bijoy Kumar Agarwal- ITAT No.272 of 2017, Order dated 22.04.2019 (Calcutta HC);*
- (iii) *PCIT -vs.- Dr. Murari Mohan Koley- ITAT No. 306 of 2017, Order dated 18.07.2018 (Calcutta HC);*
- (iv) *Neerja Saraf -vs.- ITO- ITA No. 692/KOL/2019, Order dated 14.06.2019 (Kol. ITAT);*
- (v) *Vijayshree Autocom Limited -vs.- DCIT- ITA Nos. 2374-2375/KOL/2018, order dated 28.03.2022 (Kol. ITAT),*

Hon'ble High Court as well as ITAT has held that if charges are not specified in the show-cause notice, then penalty proceeding would be *void ab initio* and no penalty would be imposable upon the assessee.

7. On due consideration of the above facts, we are of the view that the ld. 1st Appellate Authority ought to have followed the Hon'ble Jurisdictional High Court. Thus ld. 1st Appellate Authority has committed an error by

following the non-jurisdictional High Court decision on the point. After going through all these details, we are of the view that penalty is not sustainable. We allow the appeal of the assessee and delete the penalty.

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

Order pronounced in the open Court on 5th January, 2023.

Sd/-

**(Rajesh Kumar)
Accountant Member**

Sd/-

**(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 5th day of January, 2023

*Copies to :(1) Arun Kumar Bhalotia,
Legal Heir of Smt. Aruna Bhalotia (since
deceased),
113/1B, Hazra Road, Kolkata-700026*

*(2) Income Tax Officer,
Ward-10(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals)-4,
Kolkata;*

4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.