

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 438/KOL/2019
Assessment Year: 2009-2010**

***Ajay Kumar Bhartiya,.....Appellant
New Alipore Market Complex,
Phase-1, Block-M, 5th Floor,
Kolkata-700053
[PAN: AEHPB2804C]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-28(4), Kolkata,
2, Gariahat Road,
Kolkata-700029***

Appearances by:

*Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : December 29, 2022

Date of pronouncing the order : January 09, 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)-8, Kolkata dated 08.10.2018 passed for A.Y. 2009-10.

2. The solitary grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the penalty of Rs.1,94,550/- imposed under section 271(1)(c) of the Income Tax Act.

3. At the very outset, ld. Counsel for the assessee submitted that the issue in dispute is squarely covered in favour of the assessee by the following decisions of Hon'ble Calcutta High Court:-

(i) PCIT, Central-2, Kolkata -vs.- Smt. Jayashree Jayakar Mohanka (ITAT/168/2022, IA No. GA/1/2022, GA/2/2022;

(ii) PCIT, Kolkata-1 -vs.- M/s. Veronica Commerce Pvt. Limited [ITA/31/2020];

(iii) PCIT-5, Kolkata -vs.- Kolkata Port Trust [ITAT/60/2022, IA No. GA/1/2022, GA/2/2022;

(iv) PCIT, Central-2, Kolkata-vs.- Brijendra Kumar Poddar [ITAT/215/2018, IA No. GA/2//2018 (old No. GA/1832/2018);

(v) PCIT, Central-2 -vs.- Sri Bijoy Kumar Agarwal [ITAT 272 of 2017, GA 2455 of 2017]

He placed on record the copy of these decisions. According to the ld. Counsel for the assessee, the ld. A.O. before visiting the assessee with penalty failed to issue a valid show-cause notice. His notice issued under section 274 was defective. In other words, the ld. Assessing Officer was required to issue a show-cause notice under section 274 specifying the charges whether, the assessee is to be visited with penalty for furnishing inaccurate particulars of income or concealment of the particulars of

such income. The ld. Assessing Officer has used a printed proforma for such notice without specifying the specific charge. Out of the above two options, i.e. he should have specifically invited the explanation that he has furnished inaccurate particulars of income. In case, this limb of section 271(1)(c) is not applicable, then, he should have confined his show-cause notice to the extent that assessee has concealed particulars of such income. The view point of ITAT, Kolkata, which got approval of the Hon'ble Calcutta High Court on this aspect, is that if ld. Assessing Officer has not scored of one of the limb from the show-cause notice for visiting the assessee with penalty, then such notice will be fatal to the proceedings and penalty could not be levied upon the assessee. In order to buttress this submission, the assessee has placed on record the copy of the show-cause notice dated 23.12.2011 on page no. 1 of the paper book.

4. We have perused this notice and found that ld. Assessing Officer has used the printed proforma, which contained-

“have concealed the particulars of income or not.....furnished inaccurate particulars of such income”.

We are of the view that inherent jurisdictional error has been committed by the ld. Assessing Officer and, therefore, respectfully following the judgment of the

Hon'ble Jurisdictional High Court, we allow this appeal and delete the penalty.

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

Order pronounced in the open Court on 09 January, 2023.

Sd/-

**(Girish Agrawal)
Accountant Member**

Sd/-

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

Kolkata, the 09 day of January, 2023

*Copies to :(1) **Ajay Kumar Bhartiya,
New Alipore Market Complex,
Phase-1, Block-M, 5th Floor,
Kolkata-700053***

*(2) **Income Tax Officer,
Ward-28(4), Kolkata,
2, Gariahat Road, Kolkata-700029***

*(3) Commissioner of Income Tax (Appeals)-8,
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.