

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

[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. Nos. 587 to 589/Kol/2022**  
**Assessment Year : 2008-09, 2009-10 & 2014-15**

DCIT, Central Circle-4(4), Kolkata	Vs.	EVERSIGHT TRADECOMM PVT. LTD. PAN: AAACE 7667 E
Appellant		Respondent

Date of Hearing	08.12.2022
Date of Pronouncement	19.01.2023
For the Assessee	Shri Miraj D. Shah, AR
For the Revenue	Shri Biswanath Das, CIT/DR & Shir P.P. Barman, ACIT

**ORDER**

**Per Shri Sonjoy Sarma, JM:**

The above captioned appeals have been filed by the revenue challenging the separate orders of ld. CIT(A)-21, Kolkata by which the ld. CIT(A) deleting the penalty imposed u/s 271(1)(c) of the I.T. Act, 1961. Appeal being 587 to 589/Kol/2022 relating to assessment year 2008-09, 2009-10 and 2014-15 against the same assessee. Since the facts and issues involved in these appeals are common except for date, figures and assessment year. They have been clubbed together and taken up for disposal in consolidated order for the sake of convenience. The decision in 587/Kol/2022 shall apply mutantis mutandis in other appeals also, hence the grounds raised in ITA No. 587/Kol/2022 is reproduced as under:

*"1. That on the facts and in the circumstances of the case, the ld. CIT(A) has erred in law and facts of the case in cancelling the penalty of Rs. 2,33,74,126/- levied u/s 271(1)(c) of the Act without appreciating that the AO did not mention the specific charge, viz. "concealment of the particulars of income" or "furnishing of inaccurate particulars of such income" and did not strike out the inappropriate words though in assessment order dated 31.03.2016 the assessing officer had specified in very clear terms that the penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 is initiated for concealed particulars of income and had also*

*clearly specified the particular condition for which penalty proceedings was initiated with the arrow symbol in the notice u/s 274 r/w section 271(1)(c) of the I.T. Act, 1961 dated 31.03.2016.*

*2. That the department craves leaves to add, modify or alter any of the ground(s) of appeal and/or adduce additional evidence at the time of hearing of the case.”*

2. The brief facts of the case are that the assessee filed its return of income on 30.09.2009 declaring total loss of Rs. 35,99,13,932/- and survey operation u/s 133A was conducted on 05.05.2014 in the case of Shri Adish Jain and its group. Consequent to that a total disclosure of Rs. 20,79,41,930/- was made and subsequently disclosure was revised to Rs. 23,33,19,194/- and out of which Rs. 7,35,65,552/- was disclosed in the case of assessee-company for assessment year in question. Further the case of the assessee was reopened u/s 147 of the Act in response to the same, assessee company filed relevant documents as required and assessment was completed determining Nil income in the hands of the assessee. Further, the ld. AO has initiated penalty proceeding u/s 271(1)(c) of the Act in response to such proceeding assessee filed a detailed reply. However, ld. AO was not satisfied with the same and passed an order u/s 271(1)(c) by which imposing penalty amounting to Rs. 2,33,74,126/-.

3. Dissatisfied with the above order passed by the ld. AO, assessee preferred an appeal before the ld. CIT(A), by which ld. CIT(A) allowed the appeal of the assessee by observing as under:

*“The appellant has argued that the impugned penalty order was bad in law as the notice itself, upon which through the order was based, was defective. The relevant facts, in brief, are that the penalty notice u/s 274 r/w section 271(1)(c), the Ld. Assessing Officer has initiated penalty proceedings by stating as under:*

*Whereas in the course of proceedings before me for the assessment year 2008-09 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 u/s.22(1)/22(2)/34 of Indian Income Tax Act, 1922 of which you were required to furnish u/s. 139(1) or by a notice given u/s 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 u/s.22(4)/23(2) of the Indian Income Tax Act, 1922 or u/s. 142(1)/143(2) of the Income Tax 1961.*

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

*The appellant has submitted that the AO had, in the notice u/s 274 r/w section 271(1)(c), failed to specify the particular condition or limb for which penalty proceedings are initiated. He has stated that it was the duty of Ld. Assessing Officer to mention as to the violation of which limb and condition, that is, whether it was for "the concealment of particulars of income" or for "the furnishing of inaccurate particulars of income" that the penalty proceedings were being conducted and the appellant was being put to notice. The AO has not done this in the present case and for such failure, the entire penalty proceedings become void and penalty levied in this case, deserves to be deleted. During appeal the appellant has also produced a copy of the notice u/s 274 r/w section 271(1)(c), as issued by the AO.*

*The fact that the AO had indeed failed to specify the particular limb under which the penalty was proposed to be imposed is not only apparent from the copy of the notice itself, but is also borne out by the discussion in this relation by the AO, in his penalty order. In the impugned penalty order, in paragraph 4.d., the AO has admitted that he did not specify the particular limb in his notice u/s 274 r/w section 271(1)(c) of the Act. On the contrary, he has placed reliance upon the decision of the Hon ble Apex court in the case of K.P. Madhusudhanan Vs CIT [2001] 118 Taxman 324/251 ITR 99 to argue that there was no need to strike out the limb not relevant, meaning thereby that there was no need to strike out one of the two limbs mentioned on the said notice – "concealment of particulars of income" and "furnishing of inaccurate particulars of income." Therefore, it is undisputed that the AO did indeed not strike out the limb not applicable in this case.*

*A study of the decision of the Honble Apex Court in the case of K.P. Madhusudhanan Vs CIT, supra, clearly shows that the reliance placed by the AO upon this decision is completely misplaced. Even the AO himself has admitted that this decision is in the context of the Explanation to section 271(1)(c) and has merely averred that no express invocation of the Explanation to Section 271 is necessary before the provisions of the Explanation therein are applied. This issue is completely different from the controversy at hand.*

*The present matter of this appeal is completely different and is squarely covered by several decisions of various authorities including decisions of the jurisdictional Tribunal. The Hon'ble Karnataka High Court in the case of MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565, while speaking about the procedure for the issue of notice u/s 274 of the Act, has observed as under:-*

*[Para 59): ...*

*"Though penalty proceedings are in the nature of civil liability, in fact, it is penal in*

*nature. In either event, the person who is accused of the conditions mentioned in section 271 should be made known about the grounds on which they intend imposing penalty on him as section 274 makes it clear that the assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100 per cent. to 300 per cent of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under section 274 should satisfy the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended if the show-cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee."*

*This decision has been relied upon by the Hon'ble Karnataka High Court in the case of SSA Emerald Meadows to take a similar view. The Hon'ble Supreme Court has dismissed the appeal of the department in the case of Commissioner of Income Tax and others vs. SSA Emerald Meadows 2016,73 taxmann.com 248 SC by stating that no merits have being found in the Department's SLR against the order of the Hon'ble High Court of Karnataka.*

*In fact this position of the mandatory need for specifying the correct limb under which penalty u/s 271(1)(c) is proposed to be imposed has been affirmed to be valid even in those cases where the assessee has not-challenged the order for assessment and has paid the corresponding taxes and interest. The Hon'ble Karnataka High Court, in the case of MANJUNATHA COTTON AND GINNING FACTORY, mentioned supra, has once again underlined this necessity by stating that merely because the assessee has not challenged the order for assessment and has paid the corresponding taxes and interest, it would not be sufficient reason either to initiate or impose penalty u/s 271(1)(c). Once the initiation is not*

*automatic, it stands to reason that the proper procedure for initiation of penalty proceedings would necessarily have to be followed. One of the necessary conditions to be satisfied in this context, as already discussed above, is the specification of the particular limb under which penalty is proposed to be imposed. This has admittedly not been done by the AO in the present appeal.*

*I find that the Hon'ble Kolkata ITAT has also consistently been taking the aforementioned view in its decisions and has not been upholding penalty orders u/s*

*271(1)(c) where the AO has failed to mention in the penalty notice the specific limb, under which the penalty has been initiated. For instance, in the case of Dadheech Fumiture Pvt. Ltd. vs ITO Ward 7(3), Kolkata (ITA no 1923/kol/2017) [Date of Order 10.08.2018], the Hon'ble Tribunal has held:*

*“We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the ld. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled.”*

*Some of the other relevant decisions which have adjudicated upon on the point of not striking off the irrelevant portion in the penalty notice are listed below*

- 1. Order of Bombay High Court in the case of CIT VS. Shi Samson Perinchery.*
- 2. ITAT Order, Kolkata Bench in the case of Gautam Jhunjhunwala vs. ITO.*
- 3. ITAT Order, Kolkata Bench in the case of Abu Mansur Ali vs. DCIT ITA No. 2104/Kol/2017 A.Y. 2012-13 ITO Wd-13(1), Kol. Vs. M/s Ambey Retailers Pvt. Ltd. Page3*
- 4. ITAT Order, Kolkata Bench in the case of M/s Atmaram & Co. v. DCIT.*
- 5. ITAT Order, Kolkata Bench in the case of ITO vs. M/s Swastik Refinery Pvt. Ltd.*
- 6. Order of Hon'ble Supreme Court in the case of CIT vs. M/s V.S. Lad & Sons.*
- 7. Order of Hon'ble Supreme Court in the case of CIT vs. Veerabhadrappa Sangappa & Co.*

8. *ITAT order, Kolkata Bench in the case of Suresh Karmakar vs. DCIT.*

*In an elaborately discussed decision by the Hon'ble Kolkata Tribunal, in the case of ITO, Ward -13(1), Kolkata, vs M/S. Ambey Retailers Pvt. Ltd., delivered on 5 September, 2018, the Hon'ble D-Bench of the Tribunal, in ITA No.2104/Kol/2017 for AY 2012-13, the Hon'ble Bench has discussed the entire gamut of citations relevant to the present question of law. They have not only discussed the various case laws that have supported the assessee, but have also discussed and distinguished the various citation cited by the appellant in that case. After this careful analysis the Hon'ble Tribunal has come to the following conclusion:*

*"15. We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the ld. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled."*

*In the present circumstances of the instant appeal, therefore, since it is undisputed that the AO did not mention the specific charge, viz, "concealment of the particulars of income" or "furnishing off inaccurate particulars of such income", and did not strike out the inapplicable portion in the notice that he issued u/s 274 r/w 271(1)(c), it is clear that the ratios of the above mentioned decisions are squarely applicable here. The notice for the imposition of the penalty; being bad in law, automatically vitiates the order of the imposition of the said penalty. Therefore, respectfully relying upon the above discussed decisions, I cannot uphold the imposition of this penalty. The same is accordingly deleted "*

4. Aggrieved by the above order passed by the ld. CIT(A), revenue is in appeal before this Tribunal.

5. At the time of hearing, the ld. DR submitted before us that the impugned order passed by the ld. CIT(A) is bad in law by which the ld. CIT(A) cancelling the penalty levied u/s 271(1)(c) of the Act without appreciating that the AO did not mention the specific charges viz. "concealment of particulars of income" or "furnishing of inaccurate particulars of income" and did not strike out the inappropriate words though the assessment order the Assessing Officer has specified in very clear terms

that the penalty proceedings u/s 271(1)(c) of the Act initiated for concealed particulars of income and had also clearly specified the particular condition for which penalty proceedings were initiated.

6. Per contra, the ld. counsel submitted before us that the notice u/s 274 r.w.s. 271(1)(c) of the Act issued by the ld. AO has failed to specified the particular condition for which penalty proceedings are initiated and it is the duty of the ld. AO to specify under which limb and condition, the penalty proceeding are being initiated. As such the ld. CIT(A) rightly allowed the appeal of the assessee. Further in support of his contention, the ld. DR submitted a paper book containing almost 53 pages which contains copy of notice dated 31.03.2016 issued u/s 274 r.w.s 271(1)(c) of the Act by the ld. AO upon the assessee along with the list of case law in support of his argument. He has invited our attention to the relevant penalty notice to point out that the irrelevant portion viz. “furnished inaccurate particulars of income” or “concealed particulars of such income” was not strike out by the ld. AO. It is observed that the ld. co-ordinate bench of this Tribunal in the case of *Suvaprasanna Bhattacharya –vs.- ACIT (in ITA No. 1303/KOL/2010)* cited by the ld. Counsel for the assessee had an occasion to consider a similar issue in the identical fact situation and the order passed by the Assessing Officer imposing penalty under section 271(1)(c) was held to be invalid by the Tribunal relying on the decision of the Hon’ble Karnataka High Court in the case of *CIT & Another –vs.- Manjunatha Cotton & Ginning Factory* reported in 359 ITR 565 after discussing the proposition laid down therein in great detail in paragraph no. 8 to 8.2 of its order dated 06.11.2015, which read as under:-

*“8. The next argument that the show cause notice u/s.274 of the Act which is in a printed form does not strike out as to whether the penalty is sought to be levied on the for “furnishing inaccurate particulars of income” or “concealing particulars of such income”. On this aspect we find that in the show cause notice u/s.274 of the Act the AO has not struck out the irrelevant part. It is therefore not spelt out as to whether the penalty proceedings are sought to be levied for “furnishing inaccurate particulars of income” or “concealing particulars of such income”.*

*8.1 The Hon’ble Karnataka High Court in the case of CIT & Anr. v. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn), has held that notice u/s. 274 of the Act should specifically state as to whether penalty is being*

*proposed to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income. The Hon'ble High court has further laid down that certain printed form where all the grounds given in section 271 are given would not satisfy the requirement of law. The Court has also held that initiating penalty proceedings on one limb and find the assessee guilty in another limb is bad in law. It was submitted that in the present case, the aforesaid decision will squarely apply and all the orders imposing penalty have to be held as bad in law and liable to be quashed.*

8.2 The Hon'ble Karnataka High Court in the case of CIT & Anr. v. Manjunatha Cotton and Ginning Factory (supra) has laid down the following principles to be followed in the matter of imposing penalty u/s.271(1)(c) of the Act.

"NOTICE UNDER SECTION 274

*59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-1 or in Explanation-1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. **On the basis of such proceedings, no penalty could be imposed on the assessee.***

*60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt,*

*the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. **Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.***

61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in 292 ITR 11 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of MANU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing

*inaccurate particulars of income. The standard pro forma without striking of the relevant clauses will lead to an inference as to non-application of mind.”*

*The final conclusion of the Hon'ble Court was as follows:-*

*“63. In the light of what is stated above, what emerges is as under:*

- a) Penalty under Section 271(1)(c) is a civil liability.*
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- c) Willful concealment is not an essential ingredient for attracting civil liability.*
- d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.*
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*
- f) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A) & (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.*
- g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(1)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).*
- h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.*
- i) The imposition of penalty is not automatic.*
- j) Imposition of penalty even if the tax liability is admitted is not automatic.*
- k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.*

l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty could be passed.

m) If the explanation offered, even though not substantiated by the assessee, but is found to be bona fide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income

q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

u) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings.

*The assessment or reassessment cannot be declared as invalid in the penalty proceedings."*

*(emphasis supplied)*

*It is clear from the aforesaid decision that on the facts of the present case that the show cause notice u/s. 274 of the Act is defective as it does not spell out the grounds on which the penalty is sought to be imposed. Following the decision of the Hon'ble Karnataka High Court, we hold that the orders imposing penalty in all the assessment years have to be held as invalid and consequently penalty imposed is cancelled.*

*For the reasons given above, we hold that levy of penalty in the present case cannot be sustained. We therefore cancel the orders imposing penalty on the Assessee and allow the appeal by the Assessee”.*

7. In our opinion, the decision of the Coordinate Bench of this Tribunal rendered in the case of Suvaprasanna Bhattacharya –vs.- ACIT rendered vide its order dated 06.11.2015 in ITA No. 1303/KOL/2010 by relying on the decision of the Hon'ble Karnataka High Court in the case of CIT & Another –vs.- Manjunatha Cotton & Ginning Factory reported in 359 ITR 565 is squarely applicable in the present case. It is also noted that a similar view has been taken by the Hon'ble Calcutta High Court in the case of Principal CIT –vs.- Bijoy Kr. Agarwal (ITAT No. 272 of 2017 dated 02.04.2019), wherein the decision of the Tribunal cancelling the penalty imposed under section 271(1)(c) was upheld by the Hon'ble Jurisdictional High Court holding that the notice issued under section 271(1)(c) without specifying which of the two contraventions, the assessee is guilty of was defective and the penalty imposed in pursuance of such defective notice was not sustainable. To arrive at this conclusion, Hon'ble Calcutta High Court relied on the decision of Amrit Foods –vs.- Commissioner of Central Excise UP reported in (2005) 13 SCC 419 as well as their own decision in the case of Principal CIT –vs. Dr. Murari Mohan Koley (ITAT No. 306 of 2017 dated 18.07.2018). The issue raised by the assessee in this appeal thus is squarely covered by the said judicial pronouncements including the decision of the Hon'ble Jurisdictional High Court and respectfully following the same, we cancel the penalty imposed upon the assessee under section 271(1)(c) by the ld. AO and sustained the order passed by the ld. CIT(A).

8. Since, we dismiss the appeal filed by the revenue challenging the impugned order passed by the Id. CIT(A) in ITA No. 587/Kol/2022, the reasons stated above shall apply mutantis mutandis and all the appeals filed by the revenue are dismissed.

9. In the result, all the three appeals filed by the revenue are dismissed and copy of common order passed is to be placed on respective case files.

Order pronounced in the open court on 19.01.2023

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 19.01.2023

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- DCIT, Central Circle-4(4), Kolkata.
2. Respondent – Eversight Tradecomm Pvt. Ltd., 8, Camac Street, Maidan, Kolkata-700017.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata