

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

Before Shri Rajpal Yadav, Vice-President (KZ)

&

Dr. Manish Borad, Accountant Member

**I.T.A. No. 28/KOL/2023
Assessment Year: 2013-2014**

**Surjit Kaur Uberoi,.....Appellant
Flat-2C, Diamond Heights,
20/1, Chetla Road, Kolkata-700027
[PAN: AANPU4301P]**

-Vs.-

**Assistant Commissioner of Income Tax,....Respondent
Circle-29, Kolkata,
2, Gariahat Road (South), Dakshinapan,
Jodhpur Park, Kolkata-700031**

Appearances by:

*Shri S.L. Kochar, Shri Anil Kochar, Shri Aryan Kohar,
A.Rs., appeared on behalf of the assessee
Shri Vijay Kumar, Addl. CIT, Sr. DR, appeared on
behalf of the Revenue*

Date of concluding the hearing : March 07, 2023

Date of pronouncing the order : March 16, 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), National Faceless Appeal Centre (NFAC), Delhi dated 27.12.2022 passed for A.Y. 2013-14.

2. The solitary grievance of the assessee is that ld. CIT(Appeals) has erred in confirming the penalty of Rs.77,65,050/- imposed by the ld. Assessing Officer under section 271(1)(c) of the Income Tax Act. On the strength of the following decisions (whose copies have been placed on record):-

(i)	<i>Pr. CIT-19, Kolkata- vs. Dr. Murari Mohan Koley- High Court at Calcutta</i>	<i>I.T.A.T. No. 306 of 2017, G.A. No. 2968 of 2017</i>
(ii)	<i>Pr. CIT (Central) -vs.- M/s. Golden Peace Hotels & Resorts Pvt. Limited- Supreme Court order -SLP Bombay High Court - Appeal</i>	<i>2021 (3) TMI 195 -SC Order- Petition for Special Leave to Appeal (c) No. 9919/2020 2020(2) TMI 333, Tax Appeal No. 13 of 2019</i>
(iii)	<i>Pr. CIT, Central-1, Kolkata-vs.- M/s. Basanti Properties Pvt. Limited- Calcutta High Court</i>	<i>ITA 14 of 2019, GA 3412 of 2018</i>
(iv)	<i>M/s. Conquer Barter Pvt. Limited -vs.- Income Tax Officer- Income Tax Appellate Tribunal</i>	<i>ITA No. 372/KOL/2020 order dated 09.01.2023</i>

3. Ld. Counsel for the assessee has contended that in the show-cause notice issued under section 274 read with section 271(1)(c) , the ld. Assessing Officer has not specified the charges against the assessee for visiting with penalty under section

271(1)(c) of the Income Tax Act. He took us through copy of the show-cause notice available on page no. 1 of the paper book.

4. The ld. D.R., on the other hand, contended that penalty was initiated in the assessment order for furnishing of inaccurate particulars, which lead to concealment of income. This aspect has been specified even in the penalty order. He took us through the penalty order. However, he was unable to controvert the contention of the assessee about the show-cause notice.

5. We have duly considered the rival contentions and gone through the copy of the show-cause notice available on page no. 1 of the paper book. It is very debatable issue across the country, whether penalty could be imposed upon an assessee in the absence of any specific charge in the show-cause notice issued under section 274 read with section 271(1)(c) of the Income Tax Act. In other words, the ld. Assessing Officer is required to specify the charge on which an assessee has to give explanation, namely whether penalty is to be imposed upon the assessee for concealment of income or for furnishing of inaccurate particulars. In the judgments cited before us, this question has been answered in favour of the assessee, i.e. in case, the charge is not specified in the show-cause notice, then penalty would not be imposable upon the assessee.

6. On due consideration of the above aspect, we are of the view that penalty imposed upon the assessee of Rs.77,65,050/- is not sustainable, it is deleted.

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

Order pronounced in the open Court on 16th March, 2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 16th day of March, 2023

*Copies to : (1) Surjit Kaur Uberoi,
Flat-2C, Diamond Heights,
20/1, Chetla Road, Kolkata-700027*

*(2) Assistant Commissioner of Income Tax,
Circle-29, Kolkata,
2, Gariahat Road (South), Dakshinapan,
Jodhpur Park, Kolkata-700031*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) Commissioner of Income Tax- , Kolkata;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

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

Laha/Sr. P.S.