

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 110/Kol/2023**  
**Assessment Year: 2013-14**

HRG Health Care Pvt. Ltd. (PAN: AACCH 6099 R)	Vs.	ACIT, CC-2(4), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	06.04.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.05.2023
For the Appellant/ निर्धारिती की ओर से	Shri Manoj Kataruka, Advocate
For the Respondent/ राजस्व की ओर से	Shri Subhrajyoti Bhattacharjee, CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Ld. Commissioner of Income Tax (Appeals)-20, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 12.01.2023 for the AY 2013-14.

2. The only issue raised by the assessee is against the confirmation of penalty of Rs. 30,43,200/- by the Ld. CIT(A) thereby upholding the order of AO wherein penalty has been levied u/s 271AAB of the Act.

3. Facts in brief are that a search action was conducted u/s 132 of the Act on 11.04.2013 at the office and other business premises belonging to Asian Tea Group of Companies, its directors and associates. During the course of search operation undisclosed income was discovered to the tune of Rs. 304.34 lacs on account of non-disclosed transactions. In the assessment framed u/s 143(3) dated 31.03.2016, a penalty was charged u/s 271AAB of the Act was initiated. The AO finally imposed the penalty @ 10% of said undisclosed income thereby levying penalty of Rs. 30,43,200/- u/s 271AAB(1)(a) of the Act.

4. In the appellate proceedings the Ld. CIT(A) affirmed the said penalty by holding that the assessee has disclosed this income during search operation and therefore penalty u/s 271AAB was rightly imposed.

5. The Ld. Counsel of the assessee at the outset submitted that the penalty imposed by the AO is bad in law, void and nullity by referring to the notice issued u/s 271AAB of the Act dated 31.03.2016 a copy of which is filed at page 3 of the PB. The Ld. A.R stated that the said notice has been issued in a mechanical manner without mentioning the relevant clause under which penalty was proposed to be levied. The Ld. Counsel for the assessee therefore prayed before the Bench that the said notice is invalid notice and defect is not curable. The Ld. A.R stated that since the defect goes to the root of the matter and therefore penalty order passed by the AO is also invalid and nullity and may kindly be quashed. In defense of argument the Ld. A.R relied on the following decisions:

i) Decision of Co-ordinate Bench of Jaipur in the case of Mahaveer Prasad Agarwal vs. DCIT in ITA No. 1218/JP/2019 dated 2.6.2022

ii) Decision of Co-ordinate Bench of Indore in the case of Ashok Bhatia vs. DCIT in ITA No. 869/Ind/2018 dated 5.2.2020

iii) Decision of Co-ordinate Bench of Kolkata in the case of Rashmi Jalan vs. ACIT in ITA No. 326/Kol/2020 dated 30.09.2020

iv) Decision of Co-ordinate Bench of Kolkata in the case of Greenex Chemicals Pvt. Ltd. vs. ACIT in ITA No. 657/Kol/2022 dated 16.1.2023.

The ld. A.R therefore prayed that in view of the aforesaid orders of the Tribunal the penalty order may kindly be quashed.

6. The Ld. D.R on the other hand relied on the order of AO by submitting that penalty order rightly imposed after issuing show cause notice u/s 271AAB of the Act in respect of undisclosed income found during the course of search operation. Had the search operation not conducted on the assessee, the said income would have gone unnoticed.

7. After hearing the rival contentions and perusing the material on record including the notice issued u/s 271AAB dated 31.03.2016, we observe that the show cause given in the form of notice u/s 271AAB of the Act without mentioning the limb/clause under which the penalty is proposed to be levied is defective as it is a mandatory requirement. In our opinion this is a substantive defect which is not curable at all. In our considered view the said infirmity goes to the root of the matter and renders the penalty notice as well as consequent order passed u/s 271AAB of the Act as invalid and nullity. The Case of the assessee finds support from the several decisions of Co-ordinate Bench as mentioned above. We therefore respectfully following the decisions of the Co-ordinate Benches quash the penalty order as invalid.

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

Order is pronounced in the open court on 31<sup>st</sup> May, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 31<sup>st</sup> May, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- HRG Health Care Pvt. Ltd., 4/1, Middleton Street, Sikkim  
Commerce House, Kolkata-700001.
2. Respondent – ACIT, Central Circle-2(4), Kolkata
3. Ld. CIT(A)-20, Kolkata (sent through e-mail)
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata