

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.364/Kol/2023  
Assessment Year: 2012-13**

Virendra Kumar Surana, HUF 4A, Pollock Street, Swaika Centre, 3 <sup>rd</sup> Floor, R. No. 308, Kolkata-700001. (PAN: AABHV3803K)	Vs.	Income-tax Officer, Ward- 36(1), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Miraj D. Shah, Advocate  
Respondent by : Shri P. P. Barman, Addl. CIT (Sr.DR)

Date of Hearing : 10.08.2023  
Date of Pronouncement : 21.08.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeals filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1051168610(1) dated 23.03.2023 passed against penalty order u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 25.01.2022 for AY 2012-13.

2. Solitary issue raised by the assessee in the present appeal is in respect of imposition of penalty of Rs.1,25,107/- u/s. 271(1)(c) of the Act.

3. Brief facts of the case are that assessee filed its return of income on 21.06.2012, reporting total income of Rs.2,45,500/- which was

processed u/s. 143(1) of the Act. Subsequently, case of the assessee was taken up by initiating proceedings u/s. 147 read with sec. 148 of the Act as assessee had transacted into shares of Quest Financial Services Ltd. alleged to be a penny stock on which long term capital gain was claimed as exempt u/s. 10(38) of the Act. In the course of the assessment proceedings, when the assessee was confronted with the facts of the share transaction, it offered the long term capital gain which was claimed as exempt income for taxation, amounting to Rs.6,70,136/- to avoid litigation and buy peace with the Tax Department. Accordingly, Ld. AO completed the assessment, considering the voluntary offering made by the assessee which was added to the total income of the assessee as income from other sources.

3.1. While doing so, Ld. AO also initiated penalty proceedings u/s. 271(1)(c) for furnishing inaccurate particulars of income. Ld. AO issued a notice dated 28.11.2019 u/s. 274 read with section 271(1)(c) of the Act. In the penalty proceedings, assessee made its submission, however, ld. AO imposed a penalty of Rs.1,25,107/- by holding that assessee has furnished inaccurate particulars of its income. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4. Before the Ld. CIT(A), assessee submitted that Ld. AO has failed to specify the particular condition or limb for which penalty proceedings are initiated, in the notice issued u/s. 274 r.w.s. 271(1)(c) of the Act. Assessee placed reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. SS Emerald Meadows (2016) 73 taxmann.com 248 (SC) by stating that Hon'ble Supreme Court had dismissed the appeal of the Department by holding that no merits are being found in department's SLP against the order of Hon'ble High Court of Karnataka. Assessee also placed reliance on the decision of

Hon'ble Karnataka in the case of Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565. To buttress its contentions, reference was also made to the decision of Coordinate Bench, ITAT, Kolkata in the case of Dadheech Furniture Pvt. ltd. Vs. ITO in ITA No. 1923/Kol/2017 dated 10.08.2018 wherein similar issue was dealt with in favour of the assessee. Ld. CIT(A) dismissed the appeal by negating the submissions made by the assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel has placed on record paper book containing 53 pages. In the said paper book, he referred to the copy of notice issued u/s. 274 r.w.s. 271(1)(c) of the Act which is extracted below:

 <b>GOVERNMENT OF INDIA</b> <b>MINISTRY OF FINANCE</b> <b>INCOME TAX DEPARTMENT</b> <b>OFFICE OF THE INCOME TAX OFFICER</b> <b>WARD 36(4), KOLKATA</b>			
<b>To,</b> VIRENDRA KUMAR SURANA HUF 4A, SWAIKA CENTRE, ROOM NO 308, POLLOCK STREET, 3RD FLOOR NEAR TEA BOARD KOLKATA 700001, West Bengal India			
<b>PAN:</b> AABHV3803K	<b>Assessment Year:</b> 2012-13	<b>Notice No.:</b> ITBA/PNL/S/271(1)(c)/2019- 20/1021276086(1)	<b>Date :</b> 28/11/2019
<b>Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961</b>			
Sir/ Madam,			
Whereas in the course of proceedings before me for the Assessment Year <b>2012-13</b> , it appears to me <b>that you have concealed the particulars of income or furnished inaccurate particulars of such income.</b>			
You are hereby requested to appear before me either personally or through a duly authorised representative at <b>12:00 PM</b> on <b>14/01/2020</b> and show cause why an order imposing a penalty on you should not be made under section <b>271(1)(c)</b> of the Income Tax Act, 1961.			
If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section <b>271(1)(c)</b> of the Income Tax Act, 1961.			
ATIF ATA WARD 36(4), KOLKATA			

6. From the above said notice, Ld. Counsel pointed out that no specific charge has been mentioned by the Ld. AO in the said notice. Ld. Counsel reiterated the submissions made before the Ld. CIT(A), which are not repeated for the sake of brevity. However, he referred to various judicial precedents of the Hon'ble jurisdictional High Court of Calcutta as well as jurisdictional Coordinate Bench of ITAT, Kolkata, copies of which are placed in the paper book. The said citations are tabulated as under:

Decision	Before	Reference
PCIT, Central-2, Kolkata Vs. Smt. Jayashree Jayakar Mohanka	Calcutta High Court	ITAT/168/2022 IA No.: GA/1/2022, GA/2/2022
PCIT, Kolkata-1 Vs. M/s. Veronica Commerce Pvt. Ltd.	Calcutta High Court	ITA/31/2020
PCIT- 5, Kolkata Vs. Kolkata Port Trust	Calcutta High Court	ITAT/60/2022 IA NO: GA/1/2022, GA/2/2022
PCIT, Central – 2, Kolkata Vs. Brijendra Kumar Poddar	Calcutta High Court	ITAT/215/2018 IA NO:GA/2/2018 (OLD NO: GA/1832/2018)
PCIT, Central-2 Vs Sri Bijoy Kumar Agarwal	Calcutta High Court	ITAT 272 of 2017, GA 2455 of 2017
PCIT-1 Vs M/s. SRMB Srijan Ltd	Calcutta High Court	ITAT 8 of 2019, GA 188-189 of 2019
PCIT-19 Vs Dr Murari Mohan Koley	Calcutta High Court	ITAT 306 of 2017, GA 2968 of 2017
Principal Commissioner of Income Tax 1, Coimbatore Versus Shri. R. Elangovan	Madras High Court	Tax Case Appeal Nos.770 & 771 of 2018 And CMP.No.18581 of 2018
M/s. Chanda More F.L. (on) Shop Vs ITO, Ward-1(3), Asansol	ITAT, Kolkata	ITA No.573/Kol/2019 AY 2008-09
M/s. Texmaco Rail & Engineering Ltd Vs DCIT, Kolkata	ITAT, Kolkata	ITA No.2288/Kol/2019 AY 2012-13
Sri Chandan Das Vs ITO Ward 24(3), Kolkata	ITAT, Kolkata	ITA No.1500/Kol/2014 AY 2009-10

7. Ld. Sr. DR relied on the orders of the authorities below.

8. We have heard the arguments of both the sides and also perused the relevant material available on record. Ld. Counsel for the assessee, at the outset, has raised a preliminary issue before us challenging the

very initiation of the penalty proceedings by the authorities below under section 271(1)(c) on the ground that in the absence of any specific mention of the charge in the show-cause notice issued under section 274 of the Act for the year under consideration by the authorities below as to whether the assessee is guilty of having "furnished inaccurate particulars of income" or of having "concealed particulars of such income", the initiation of penalty proceedings itself was bad in law and the penalty order passed in pursuance thereof is liable to be quashed being invalid. 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 struck off by the Ld. Assessing Officer.

9. It is observed that Hon'ble jurisdictional High Court of Calcutta has dealt with substantial question of law in respect of the issue before us in several of its judgments, one of which, we refer in the case of PCIT Vs. Brijendra Kumar Poddar in ITAT/215/2018, IA No. GA/2/2018 (Old No. GA/1832/2018 dated 23.11.2021. The substantial questions of law for consideration before the Hon'ble High Court in this case were as under:

*"a) Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal was justified in cancelling deleting the penalty imposed u/s. 271(1)(c) of the Income Tax Act, 1961 and thereby upholding the order passed by the CIT(A) on the ground that the assessee had made a suo motu declaration of the HSBC account and deposits therein before the DGIT (Inv) Kolkata and also that the assessee had paid full taxes on his own before initiation any action or issue of any notice in this regard and further that in the show cause notice under section 274 in the printed form the irrelevant portion, viz. "furnished inaccurate particulars of income" or "concealed particulars of such income" was not struck off by the AO?*

*(b) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and fact in holding that the notices under Section 274 of the Income Tax Act, 1961 were not in accordance with law?*

*(c) Whether, on the facts and in the circumstances of the case and in law, imposition of penalty is a civil consequence and is bereft of the fact as to whether it was deliberate or indeliberate concealment of income and*

*furnishing of incartate particulars and the CIT(A) as also the Tribunal erred in law in not appreciating the same and the Tribunal as also the CIT (A) erred in law in not appreciating the same and deleting the penalty imposed upon the assessee by the assessing officer only on the grounds that the assessee had made a suo motu declaration of the HSBC account and deposits therein before the DGIT (Inv) Kolkata and also that the assessee had paid full taxes on his own before initiation any action or issue of any notice in this regard and further that in the show cause notice under section 274 in the printed form the irrelevant portion, viz. "furnished inaccurate particulars of income" or "concealed particulars of such income" was not struck off by the AO ?*

*(d) Whether Section 271 of the Income Tax Act, 1961 mandates recording in clear terms of satisfaction of the assessing officer about the concealment of income or furnishing of inaccurate particulars by the assessee either in the assessment order or in the notice under Section 274?"*

10. The observations and findings given by the Hon'ble High Court while passing the judgment on the above substantial questions of law against the revenue are as under:

"The short issue which falls for consideration is whether the order passed by the Commissioner of Income Tax (Appeals) 21 Kolkata reversing the order passed by the Assessing Officer imposing penalty on the assessee under Section 271(1)(c) of the Act was justified and whether the Tribunal by the impugned order was right in confirming the order passed by the CIT(A) thereby deleting the penalty imposed. After elaborating hearing the learned Counsel for the appellant/revenue and for the respondent/assessee we find that CIT(A) has examined the factual position more particularly the form of the notice and found that notice was defective and taking note of the various decisions of the other High Courts held that penalty could not have been imposed pursuant to such a defective notice. The revenue carried the matter to the Tribunal and Tribunal re-examined the matter and agreed with the view taken by the CIT(A). We find that the Tribunal rightly took note of the decision of the High Court in CIT Vs. Manjunatha Cotton and Ginning Factory reported at (359 ITR 565) as well as other decision. The finding rendered by the Tribunal is to the following effect :-

*"(7) It is well settled position of law that the penalty under Section 271 (1) (c) is leviable if the Assessing Officer is satisfied that the assessee has concealed particulars of his income or furnished inaccurate particulars of such income. As held by the Hon'ble Supreme Court in the case of Dilip N. Shroff [91 Taxman 218J, the two expressions "concealment of particulars of income" and "furnishing of inaccurate particulars of income" are different connotations and it is imperative for the assessee to be made aware as to which of the two is being put against him for the purpose of levy of penalty under section 271 (1)(c) so that he can defend accordingly. If the notice issued under section 274 is issued by the Assessing Officer in the standard printed proforma without striking out the irrelevant clause like in the present case, the same, in our opinion, cannot convey to the assessee as to which of the charges he has to respond and such notice issued by the Assessing Officer without application of mind is liable to treated as vague on the*

*basis of which no penalty can be imposed on the assessee as held by the Hon'ble Karnataka High Court, inter alia, in the case of SSA's Emerald Meadows (supra) and Manjunathan Cotton & Ginning Factory (supra). Even the Hon'ble Bombay High Court in the case of Samsung Perinachery (ITA No. 1154, 953, 1097 and 1126 of 2014 dated 05.01.2017) has taken a similar view while upholding the decision of the Tribunal that the notice issued under Section 274 by the Assessing Officer in the standard format without striking off the irrelevant portion as bad in law and the order passed in pursuance of such notice imposing penalty under section 271(l)(c) was liable to be cancelled being invalid."*

The decision rendered by the Tribunal is in full consonance with the law laid down by the various High Court as well as Hon'ble Supreme Court on the subject issue. The learned Senior Counsel appearing for the respondent has placed before us the decision of this case in the case of Principal Commissioner of Income Tax - 19 Kolkata Vs. Dr. Murari Mohan Koley) dated 18th July 2018. In the said decision the Hon'ble Division Bench took note of the various decisions including the decision in the case of Manjunatha Cotton(supra) which was affirmed by the Hon'ble Supreme Court as the appeal filed by the revenue was dismissed by the Hon'ble Supreme Court. Furthermore, the Supreme Court has also taken note of the decision of the Bombay High Court in CIT Vs. Samsung Perinachery in ITR 1154 of 2014 dated 5th January 2017 and ultimately held that the show cause notice issued under Section 274 of the Act does not specify the charge against the assessee as to whether it is concealing particulars of income or furnishing inaccurate particulars of income and, therefore, the show cause notice was defective. The decision of this Court in the case of Dr. Murari Mohan Koley (supra) will apply with full force. Thus we are of the considered view that the order passed by the Tribunal does not call for any interference. Accordingly, appeal fails and the substantial questions are answered against the revenue."

11. The above referred decision has been followed subsequently by the Hon'ble High Court of Calcutta in its decision in the case of PCIT Vs. Kolkata Port Trust in ITAT/60/2022 dated 05.09.2022.

11.1. The issue before us is no longer *res integra*. On due consideration of the facts and circumstances and as also observed from the show cause notice issued u/s. 274, we find that Ld. AO has not specified the charge for which assessee is being visited with penalty i.e. whether it is for concealing the particulars of income or for furnishing of inaccurate particulars of income. The show cause notice u/s. 274 does not strike out the inappropriate words, therefore, in these circumstances respectfully following the decisions (supra) of the

Hon'ble jurisdictional High Court of Calcutta as well as other several judicial precedents referred in the course of hearing, we are of the view that imposition of penalty cannot be sustained. We, therefore, delete the penalty and allow the ground taken by the assessee in this respect.

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

Order is pronounced in the open court on 21st August, 2023.

Sd/-

(Rajpal Yadav)  
Vice President

Sd/-

(Girish Agrawal)  
Accountant Member

Date:21<sup>st</sup> August, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:
  3. CIT(A), NFAC, Delhi
  4. CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata