

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं

श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 126/KOL/2023
Assessment Year: 2012-13**

***M/s. H.S. Virdi.....Appellant
[PAN: AADFH 5651 D]***

Vs.

ITO, Ward-2(1), Asansol.....Respondent

Appearances by:

Sh. U. Dasgupta, Adv., appeared on behalf of the Assessee.

Sh. P.P. Barman, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : July 27th, 2023

Date of pronouncing the order : August 21st, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This appeal preferred by the assessee is against the order passed by Learned Commissioner of Income-tax (Appeals)-NFAC, Delhi [hereinafter referred to Ld. 'CIT(A)'] dated 20.12.2022 for the Assessment Year (in short 'AY') 2012-13.

2. First of all, we would like to deal with and decide ground no. 2 raised by the assessee which is extracted below:

“For that on facts of the case the initiation of penalty u/s 271(1)(c) of the Act vide notice u/s 274 of the Act dated 23.03.2015 is legally not valid and the penalty proceedings on the face of such defective notice may please be deleted.”

3. The facts in brief are that the assessment u/s 143(3) of the Act was framed vide order dated 23.03.2015 assessing the total income of the assessee at Rs. 47,60,580/- as against the returned income of Rs. 7,47,620/-. The penalty proceedings were initiated u/s 271(1)(c) r.w.s. 274 of the Act vide notice dated 23.03.2015 stating therein to show cause as to why the penalty should not be imposed for concealing the particulars of income or inaccurate particulars of such income. Finally, The Assessing Officer (in short ld. 'AO') levied penalty of Rs. 8,96,232/- vide order dated 31.03.2019 passed u/s 271(1)(c) of the Act.

4. The assessee challenged the validity of the said order before Ld. CIT(A). However, Ld. CIT(A) dismissed the appeal of the assessee by relying on the decision of Hon'ble Apex Court in the case of *Mak Data Pvt. Ltd. Vs. CIT* reported in 358 ITR 593 (SC) which provides that voluntary disclosure did not release the assessee from mischief of penal proceeding u/s 271(1)(c) of the Act. Ld. CIT(A) did not adjudicate the issue challenged by the assessee of non-striking off one of the two limbs on which the penalty was proposed to be levied.

5. After hearing rival contentions and perusing the material on record, we find that the penalty in this case was initiated vide

notice dated 23.03.2015 issued u/s 274 of the Act r.w.s. 271(1)(c) of the Act wherein the assessee was called upon to show cause as to why the penalty should not be levied u/s 271(1)(c) of the Act for concealing the particulars of income or furnishing inaccurate particulars of income. Thus, the penalty notice has been issued in a standard format without application of mind as Ld. AO had failed to specify one of the two limbs under which the penalty was proposed to be levied thereby denying the assessee the legitimate opportunity to respond to the show cause notice. In our view, the said notice is not valid and suffers from incurable defect which goes to the root of the matter and hence, the penalty order passed based upon the said notice cannot be sustained. The case of the assessee finds support from the decision of *CIT Vs SSA's Emerald Meadows ITA No. 380 of 2015 (ITA No. 433/BAN/2014)* wherein the Hon'ble Apex Court has held that the failure to specify in the penalty notice whether the penalty is proposed for inaccurate particulars of income or concealment of income makes the penalty proceedings liable for cancellation. In the case of *CIT Vs Samson Perinchery ITA No. 1154*, the Hon'ble Bombay High Court has held that failure by the AO to satisfy in notice issued u/s 274 of the Act, one of the two limbs on which the penalty was proposed to be levied i.e. furnishing of inaccurate particulars of income or for concealment of income is fatal and not curable and renders the levy of penalty invalid.

6. We, therefore, respectfully following the ratio laid down in the above decisions, set aside the order of Ld. CIT(A) and direct Ld. AO to delete the penalty levied u/s 271(1)(c) of the Act.

7. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 21st August, 2023.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 21.08.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. H.S. Virdi, Qr. No. 40/B, Street No. 66, P.O.-
Chittaranjan, Burdwan-713 331.**
- 2. ITO, Ward-2(1), Asansol.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata