

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'A' KOLKATA
BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No.92/Kol/2023
Assessment Year: 2014-15

Anup Kumar Dutta J.K. Ropeways Agent Office, P.O. Kajaoragram, Andal, Burdwan- 713338. PAN: AGUPD 7488 D (Appellant)	Vs.	ACIT, Circle-1, Durgapur (Respondent)
--	-----	---

Present for:

Appellant by : Shri Arvind Agarwal, AR
Respondent by : Shri B.K. Singh, JCIT, Sr. DR

Date of Hearing : 16.10.2023
Date of Pronouncement : 20.10.2023

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 24.11.2022 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

"i. For that in view of the facts and circumstances of the case, ld. CIT(A) erred on facts as well as in law in sustaining the levy of penalty of Rs. 266000/- imposed under section 271(1)(c) of the Income Tax Act, 1961 by ld. Assistant Commissioner of Income Tax, Circle-1, Durgapur.

ii. For that without prejudice to the above, the order of ld. CIT(A) is otherwise bad on facts as well as in law.

iii. For that the appellant craves leave to adduce additional ground and/or change or withdraw any of the grounds at the time of hearing or before the hearing."

2. At the outset, we find that there is a delay of 7 days in filing of the appeal by the assessee. We after perusing the petition for condonation of delay are convinced that the assessee was prevented

by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. The assessee has raised 3 grounds of appeal. However, the main grievance of the assessee is that ld. CIT(A) has erred in confirming the penalty of Rs. 2,66,000/- imposed upon the assessee u/s 271(1)(c) of the Act. At the time of hearing, ld. AR contended that in the show cause notice dated 23.11.2016 issued u/s 274 read with section 271(1)(c) of the Act. The ld. assessing officer has not specified the charges, for which the assessee is required to explain its possession. It can be said in other words that ld. assessing officer has not specified whether penalty is being imposed for concealment of income or furnishing of inaccurate particulars. Therefore, the penalty imposed upon the assessee is not sustainable.

4. On the other hand, ld. DR supported the decision rendered by the authorities below. However, he was unable to controvert the contention made by the assessee.

5. We after hearing both the parties and on going through the record available with us, note that the plea raised by the assessee is very debatable plea across country. There are large numbers of decisions at the end of the Hon'ble High Court as well as Tribunal where it has been laid down that if charges are not specified by the ld. assessing officer in the show cause notice then penalty will not be leviable upon the assessee. For this contention, we make reference to the following decisions rendered by various High Courts in following manner:

- i. Pr. CIT-19, Kolkata vs Dr. Murari Mohan Koley High Court at Calcutta.*
- ii. Pr. CIT (Central) vs M/s. Golden Peace Hotels & Resorts Pvt. Ltd. – Supreme Court order – SLP.*

- iii. Pr. CIT, Central -1, Kolkata vs M/s. Basanti Properties Pvt. Ltd. – Calcutta High Court.
iv. M/s. Conquer Barter Pvt. Limited vs Income Tax Officer, Income Tax Appellate Tribunal.”

6. In view of the above, appeal of the assessee is allowed and penalty is deleted.

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

Order pronounced in the open court on 20.10.2023

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 20.10.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Anup Kumar Dutta.
2. The Respondent: ACIT, Circle-1, Durgapur.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata