

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

**Before Shri Rajesh Kumar, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 439/KOL/2023
Assessment Year: 2012-2013**

**B.P. Poddar Foundation for Education,.....Appellant
Poddar Court, 9th Floor,
18, Rabindra Sarani,
Kolkata-700001
[PAN:AAATB5418M]**

-Vs.-

**Assistant Commissioner of Income Tax,....Respondent
Circle – 1(1), Exemption, Kolkata,
10B, Middleton Row,
Kolkata-700071**

Appearances by:

Ms. Puja Somani, A.R., appeared on behalf of the assessee

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

**Date of concluding the hearing : December 26, 2023
Date of pronouncing the order : January 05, 2024**

O R D E R

Per Shri Rajesh Kumar, Accountant Member:-

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 07.03.2023, which is arising out of the order under section 271(1)(c) of the Income Tax Act, 1961 for A.Y.

2012-13 framed by National Faceless Assessment Centre, Delhi.

2. The legal issue raised by the assessee is that the ld. CIT(Appeals) has erred in law and on facts by upholding the penalty order passed under section 271(1)(c) of the Income Tax Act, which was passed after issuing invalid show-cause notice in which the relevant limb for imposing penalty was not indicated.

3. The facts in brief are that the assessee filed its return of income on 26.09.2012 declaring total income at 'NIL'. Thereafter the case of the assessee was selected for scrutiny assessment and notice was issued and duly served upon the assessee. Finally the income of the assessee was assessed at Rs.96,74,292/- vide order dated 26.03.2015 passed under section 143(3)/11 of the Act wherein the ld. Assessing Officer denied the exemption under section 11 of the Act on the ground of violation of provisions of sections 13(1)(c) and 13(1)(d) read with section 11(5) of the Income Tax Act, 1961. The ld. Assessing Officer initiated the penalty proceeding for furnishing inaccurate particulars of income and finally imposed penalty of Rs.1,80,940/- being 100% of the tax sought to be evaded vide order dated 02.02.2022 passed under section 271(1)(c) of the Act, which was also affirmed by the ld. CIT(Appeals).

4. The ld. Counsel for the assessee vehemently submitted before us that the penalty has been imposed by the ld. Assessing Officer on the addition made, which has been deleted by the ld. CIT(Appeals) nonetheless the ld. CIT(Appeals) has made the addition on some different accounts. The ld. A.R. submitted that the addition by the ld. CIT(Appeals) was not subject matter of penalty, whereas the addition deleted by the ld. CIT(Appeals) was the subject matter of imposition of penalty under section 271(1)(c) of the Act and, therefore, the penalty deserves to be deleted on this account. Besides, ld. Counsel for the assessee submitted that the show-cause notice issued by the ld. Assessing Officer for imposing the penalty, a copy of which filed at page no. 16 of the paper book, reveal that one of the limbs of penalty was not marked meaning thereby that the penalty notice has been issued in a standard format without application of mind in a mechanical manner. Ld. Counsel for the assessee submitted that the penalty order passed on the basis of such mechanical/standard notice, which deprives the assessee from responding on the correct charge/limb on which the penalty was imposed and, therefore, the ld. A.R. prayed that the penalty imposed by the ld. Assessing Officer be deleted.

5. On the other hand, ld. D.R. relied on the order of authorities below.

6. After hearing the rival contentions and perusing the material placed before us, we find that the notice dated 26.03.2015 was issued in a standard format, i.e. by mentioning both the limbs of penalty. In other words, it has been mentioned that the assessee has furnished inaccurate particulars of income, which is not correct position of law. In our opinion, the ld. Assessing Officer has to issue the show-cause notice by mentioning the correct limb on the penalty was proposed to be levied, which is lacking in this case and thus the assessee was deprived from replying to the show-cause notice thereby violating the principle of natural justice. Accordingly, we hold that the order passed by the ld. Assessing Officer is not sustainable in law and is quashed.

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

Order pronounced in the open Court on 05/01/2024.

Sd/-

Sd/-

Sonjoy Sarma
Judicial Member

(Rajesh Kumar)
Accountant Member

Kolkata, the 5th day of January, 2024

Copies to :

- (1) B.P. Poddar Foundation for Education,
Poddar Court, 9th Floor,
18, Rabindra Sarani,
Kolkata-700001
- (2) Assistant Commissioner of Income Tax,
Circle – 1(1), Exemption, Kolkata,
10B, Middleton Row, Kolkata-700071

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

(4) *Commissioner of Income Tax-;*

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

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

Laha/Sr. P.S.