

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

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 423/Kol/2023
Assessment Year : 2014-15

Sona Kumar Show	vs	ACIT, Ward-23(1), HG Kolkata
PAN: AKAPS 5712 R		
Appellant		Respondent

Date of Hearing	20.02.2024
Date of Pronouncement	21.02.2024
For the Assessee	None
For the Revenue	Shri Sanjay Paul, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 01.03.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. failed to appreciate that none of the conditions precedent required to be satisfied for the assumption of jurisdiction u/s. 274 of the Income Tax Act, 1961 existed and/or have been complied with and/or fulfilled in the instant case by the Ld. Assistant Commissioner Income Tax, Circle 23(1). Hooghly and his specious action of upholding the impugned order imposing penalty of Rs. 10,000/- passed u/s 272B of the Act for purported infringement to the provisions of s. 139A(5) of the Act is therefore ab initio void, ultra vires, and ex-facie null in law.

2. FOR THAT on a true and proper interpretation of the scope of the provisions of s. 272B of the Income Tax Act, 1961, the Ld. Commissioner of Income Tax (Appeals)-N.E.A.C. was absolutely in error in upholding the impugned order imposing penalty in the sum of Rs. 10,000/- passed by the Ld. Assistant Commissioner Income Tax, Circle 23(1), Hooghly and his purported finding de hors any notice thereof is wholly arbitrary, unreasonable, and perverse.

3. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. erred in sustaining the impugned order imposing penalty u/s. 272B of the Act passed without considering explanation tendered by the appellant in light of the provision of s. 273B of the Income Tax Act, 1961 by the Ld. Assistant Commissioner Income Tax, Circle 23(1), Hooghly and thereby failing to controvert his bonafides in the facts of the instant case and the impugned findings on the issue is therefore, unfounded, unjustified, and untenable in law.

4. FOR THAT the specious approach of the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. of considering improper facts, failing to consider proper position in law and thus coming to an erroneous finding in confirming the impugned order imposing penalty u/s. 272B of the Income Tax Act, 1961 in the sum of Rs. 10,000/- passed by the Ld. Assistant Commissioner Income Tax, Circle 23(1), Hooghly is wholly illegal, legitimate, and infirm in law.”

2. Brief facts of the case are that the assessee filed its original return of income disclosing a total income of Rs. 5,24,400/-. The case of the assessee was selected for scrutiny through CASS and order u/s 143(3) of the Act was passed by AO assessed the income at Rs. 18,22,300/-. During the course of scrutiny proceeding it was noticed that the assessee maintained account with Punjab National Bank as well as SBI and deposited huge cash on different occasions in his accounts. However, the ld. AO found that as per the provision of sub-section 5 of section 139A of the I.T. Act, 1961, the assessee was required to quote his Pan at the time of depositing of cash of Rs. 50,000/- or more. However, assessee did not mention his PAN while depositing cash of Rs. 50,000/- or more. Although, he has having his PAN at that time of such deposits were made. Accordingly penalty notice 272B was issued to the assessee. However, no one turned up in terms of notice issued to assessee therefore, the ld. AO imposed penalty of Rs. 10,000/- upon the assessee.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Dissatisfied with the above order, assessee is in appeal before this Tribunal raising various grounds of appeal. However, main grievance of the assessee is in this appeal relating to upholding the impugned order passed by the AO by which imposing penalty of Rs. 10,000/- u/s 272B of the Act. On this context, ld. AR submitted before the bench in the case of assessee no notice was issued u/s 274 of the Act issued before passing the penalty order in the case of assessee and even on the notice issued u/s 272B does not reveal the specific default justifying the issuance thereof. The ld. AR brought to our notice as in the case of CIT vs Manjunatha Cotton And Ginning Factory (2013) 359 ITR 565 (Kar.) where show cause notice u/s 274 of the Act was issued termed as defective notice as it did not spell out the grounds on which penalty was sought to be imposed and Hon'ble High Court declaring such imposition of penalty was not proper in the hands of assessee by deleting the same. The ld. AR prayed before the bench applying the same proposition of law where show cause notice did not spell out the specific ground on which penalty was sought to be imposed. Therefore the notice was bad in law accordingly imposition of penalty upon the assessee is liable to be deleted.

5. We after hearing the submission of the parties and a perusal of the notice has issued in the case of assessee in following manner:



आयकर सहायक आयुक्त, सर्कल-23(1), हुगली का कार्यालय
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME-TAX CIRCLE-23(1), HOOGHLY
 आयकर भवन, जी टी रोड चुचुडा, हुगली
AAYAKAR BHAWAN, G.T. ROAD, CHINSURAH, HOOGHLY, PIN- 712101.

No. ACIT/Cir-23(1)/Hg/u/s. 272B/18-19/ 858

Date : 12.10.2018

To
 Shri Sona Kumar Show,
 Sahapur, Tarakeswar,
 Hooghly- 712410.

विषय / Sub : Hearing for penalty proceedings u/s. 272B- matter reg.

Kindly refer to the above.

As per provision of Sec. 139A of the I.T. Act, you were required to quote permanent account number in any document referred to in clause(c) of sub- sec.(5) of Sec. 139A. On verification it reveals that you did not mention your PAN. So, penalty u/s.272B may be levied due to failure in mentioning PAN.

You are hereby requested to appear before the undersigned on 09.11.2018 at 11.30 A.M. and show cause why penalty U/s. 272B of the I.T. Act, will not be imposed for non- submission of PAN.

Please treat this as most urgent.



(अ. चक्रवर्ती)

आयकर सहायक सर्कल 23(1) हुगली

(A. Chakraborty)

A.C.I.T, Cir-23(1), Hooghly.

A. CHAKRABORTY
 ACIT, Circle-23(1), Hooghly
 AO Code WBG-C-182 (1)

A. CHAKRABORTY
 ACIT, Circle-23(1), Hooghly
 AO Code WBG-C-182 (1)

6. We after perusing the above notice issued by the AO it did not clearly specified under specific default has been done by the assessee also did not satisfy the charges leveled against him. As in the present case penalty proceeding initiated without specifying any particular default in the case of assessee followed by imposition of penalty therefore order passed u/s 272B of the Act is null & void. Accordingly, penalty imposed u/s 272B of the Act imposed upon the assessee is not sustainable and directed to delete the same. In terms of the above, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 21.02.2024.

Sd/-

Sd/-

(Dr. Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 21.02.2024

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant – Sona Kumar Show, C/o. S.N. Ghosh & Associates, Advocates, 2, Garstin Place, 2nd Floor, Suite No. 203, Off Hare Street, Kolkata-700 001.
2. Respondent – ACIT, Ward-23(1), Hooghly.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata