

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.39/Kol/2024
Assessment Year: 2015-16**

Muklesur Rahaman Sarkar C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2 nd floor, Kolkata-700069. (PAN: ATPPS0434C)	Vs.	Assistant Commissioner of Income Tax, circle 61, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddharth Agarwal, Advocate
Respondent by : Shri Rakeshb Kumar Das, CIT, DR

Date of Hearing : 13.03.2024
Date of Pronouncement : 19.03.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1059186385(1) dated 29.12.2023 passed against the penalty order by Assessing Officer, (NFAC), Delhi u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 01.02.2022 for AY 2015-16.

2. The only issue raised by the assessee in the present appeal is in respect of challenging imposition of penalty of Rs.39,38,412/- u/s. 271(1)(c) of the Act which is liable to be quashed since the Ld. AO has failed to specify the charge in the notice issued u/s. 274 read with section 271(1)(c) of the Act.

3. In the present case, the assessment was completed u/s. 143(3) at an assessed total income of Rs.1,09,20,360/- against returned income of Rs.17,10,250/-. While concluding the assessment, Ld. AO had made an aggregate addition of Rs.92,10,110/- on four grounds. Out of these four grounds, on two major grounds addition was made by the Ld. AO in respect of which assessee did not contest. Penalty proceedings u/s. 271(1)(c) was initiated taken up by the Ld. AO. Ld. AO imposed a penalty of Rs.39,38,412/- @ 200% of the tax sought to be evaded on an addition made towards long term capital gain and addition made u/s. 56(2)(vii)(b) of the Act. Ld. CIT(A) confirmed the penalty so imposed.

4. Before us, Ld. Counsel for the assessee asserted that the notice issued u/s. 274 read with section 271(1)(c) does not specify the specific charge for which such notice has been issued. He referred to page 1 of the paper book wherein copy of notice is placed. In the said notice, it is noted by the Ld. AO as under:

“Whereas in the course of proceedings before me for the AY 2015-16, it appears to me that you have concealed the particulars of income or furnished inaccurate particulars of such income.”

5. The said notice is dated 28.12.2017. He thus, referring to the said notice submitted that no specific charge has been made out by the Ld. AO for imposition of penalty. He placed reliance on several judicial precedents of the Hon'ble jurisdictional High Court of Calcutta in the case of –

(i) PCIT Vs. Dr. Murari Mohan Koley in ITAT No. 306 of 2017, GA No. 2918 of 2017 dated 18.07.2018,

(ii) PCIT Vs. M/s. Basanti Properties Pvt. Ltd. in ITA INo. 14 of 2019, GA No. 3412 of 2018 dated 26.02.2019,

(iii) PCIT Vs. SRMB Srijan Ltd. in ITAT 8 of 2019, GA 188 of 2019 dated 26.02.2019,

wherein the Hon'ble Court had come to the conclusion that unless the charge against the assessee is specific, the same could not be maintained. Thus, on this sole technical defect in the notice issued u/s. 274 read with section 271(1)(c) of the Act, the penalty so imposed had been deleted.

6. Respectfully following the aforesaid judicial precedents, we delete the penalty imposed in the present case since similar facts are present in this appeal. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 19th March, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 19th March, 2024

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