

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 1247/Kol/2023
Assessment Year: 2013-14

Civtect (India) Pvt. Ltd. C/o Subash Agarwal & Associates Advocates Siddha Gibson 1, Gibson Lane Suite 213, 2 nd Floor Kolkata - 700069 [PAN: AABCC3760B]	Vs	ACIT, Circle-10(1), Kolkata
---	----	------------------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
-------------------------------	--	---------------------------------

Assessee by :	Shri Siddharth Agarwal, Advocate
Revenue by :	Shri B.K. Singh, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख/Date of Pronouncement : 02/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, [hereinafter the "Id. CIT(A)"] dt. 26/10/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14.

2. The only issued involved in this appeal is as to whether the Id. CIT(A) is justified in confirming the penalty of Rs.11,95,511/-, imposed by the Assessing Officer u/s 271(1)(c) of the Act.

3. The Id. Counsel for the assessee submitted that the penalty has been levied on disallowance of sales tax and disallowance u/s 40(a)(ia)

of the Act and it is not a case of concealment of income or furnishing of inaccurate particulars of income.

On the other hand, the Id. D/R, vehemently argued supporting the orders of the lower authorities.

4. We have heard rival contentions and perused the material placed on record. We notice that the assessee is a private limited company and was assessed to tax u/s 143(3) of the Act on 08/01/2016 and various additions were made. Penalty proceedings u/s 271(1)(c) of the Act was initiated and finally they were levied on following two disallowances:-

- (i) U/s 43B of the Act - Rs.37,19,259/-
- (ii) U/s 40(a)(ia) of the Act - Rs.65,290/-

4.1. We on perusal of the grounds notice that the assessee has raised a legal issue by specifically raising Ground No. 3 stating that the penalty order u/s 271(1)(c) of the Act is liable to be quashed as the Id. AO has failed to specify the charge in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act. Copy of the showcause notice dt. 08/01/2016 is placed at page no. 1 of the paper book. Perusal of the same indicates that the Id. AO has mentioned both the charges i.e., Concealment of particulars of income or furnished inaccurate particulars of income. The Id. AO has not stricken off one of the charges not applicable. Also we notice that there are two issues on which penalty has been levied but no mention of such issue *vis-à-vis* the charge levelled against the assessee is appearing in the showcause notice. Under these given facts and circumstances, where a specific charge has not been levelled against the assessee before visiting

the assessee with a penalty u/s 271(1)(c) of the Act, we find that the Hon'ble Jurisdictional High Court in the case of *Pr. CIT vs. Murari Mohan Koley* in ITAT No. 306 of 2017, dated 18th July, 2018 and also in the case of *Pr. CIT vs. M/s. Basanti Properties Pvt. Ltd.* reported in [(2020) 114 taxmann.com 540 (Cal. HC), has confirmed the view taken by the Tribunal in holding that such penalty proceedings deserve to be quashed where a specific charge has not been levelled and specified against the assessee. Relevant part of the judgment of the Hon'ble Jurisdictional High Court in the case of *Pr. CIT vs. Murari Mohan Koley (supra)* is extracted for ready reference:-

"We find that there was no specific charge against the assessee in the notice. Revenue has missed out their opportunity to subject the assessee to the penalty proceeding by not issuing a proper notice. No specific case has been made out by the Revenue as to why the matter should be remanded except that the assessee had not participated properly in the assessment proceedings but for that reason best judgment assessment has been made and the income, which had escaped assessment has been added to the income of the assessee. It was incumbent upon the Revenue to make out a specific case for imposition of penalty, on which count the Revenue has failed."

5. Respectfully following the above judicial precedents, we quash the penalty proceedings as bad in law and delete the penalty levied. As we have already decided the legal issue, the remaining grounds are rendered academic in nature which require no adjudication.

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

Order pronounced in the Court on 2nd April, 2024 at Kolkata

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 02/04/2024

S.C.S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata