

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SONJOY SARMA, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 441 & 442/KOL/2024
Assessment Years: 2007-08 & 2008-09**

Bagaria Leasing Pvt. Ltd.	Vs.	ITO, Ward-1(1), Kolkata
(Appellant)		(Respondent)
PAN: AABCBO441L		

Appearances:

Assessee represented by : Miraj D. Shah, AR.

Department represented by : P.N. Barnwal, CIT, DR and
Abhijit Adhikari, JCIT, Sr. DR.

Date of concluding the hearing : November 28th, 2024

Date of pronouncing the order : November 29th, 2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

Both the appeals filed by the assessee pertaining to the AYs 2007-08 & 2008-09 are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Id. 'CIT(A)'] dated 11.01.2024. Since the issues raised in both these appeals are common and the facts are identical, therefore, they were heard together and are being disposed of vide this common order for the sake of convenience and brevity.



2. The grounds of appeal raised are as under:

I. I.T.A. No 441/KOL/2024; AY 2007-08:

- 1. That the Order passed u/s 250 is bad in law as well as on facts of the case.*
- 2. That the Hon'ble CIT(A), NFAC erred in law as well as in facts by confirming the action of the Ld. Assessing Officer in imposing penalty of Rs. 2,84,15,638/- u/s 271(1)(c) of Income Tax Act, 1961 being 100% of the tax sought to be evaded.*
- 3. That the appellant craves to leave, add or amend any of the grounds during the course of appellate proceedings.*

II. I.T.A. No 442/KOL/2024; AY 2008-09:

- 1. That the Order passed u/s 250 is bad in law as well as on facts of the case.*
- 2. That the Hon'ble CIT(A), NFAC erred in law as well as in facts by confirming the action of the Ld. Assessing Officer in imposing penalty of Rs. 54,72,376/- u/s 271(1)(c) of Income Tax Act, 1961 being 100% of the tax sought to be evaded.*
- 3. That the appellant craves to leave, add or amend any of the grounds during the course of appellate proceedings.*

3. We will first take up the appeal for the AY 2007-08. Brief facts of the case are that the assessee had filed the return of income for AY 2007-08 on 30.03.2008 declaring total income of Rs. 21,043/- and the proceedings u/s 263 of the Act were initiated as the assessment order was found to be erroneous in so far as it was prejudicial to the interests of the Revenue and the same was set aside with certain directions by the Pr. Commissioner of Income-tax (in short 'the Ld. PCIT') vide order dated 06.03.2013. Consequent to the order of the Ld. PCIT, an order u/s 143(3)/263 of the Act was passed on 24.03.2014 assessing the total income at Rs.8,37,56,701/- and penalty proceedings u/s 271(1)(c) of the Act were also initiated. Subsequent to the passing of the assessment order, penalty u/s 271(1)(c) of the Act was imposed at Rs. 2,84,15,638/- vide order dated 14.02.2019. The assessee filed an appeal before the Ld. CIT(A) who issued several notices from 02.02.2021 to 15.06.2021 and



dismissed the appeal as the assessee failed to pursue the same. Even on merits of the case, the appeal was dismissed as the share premium received was Rs. 190/- on shares of face value of Rs. 10/- and the assessee had failed to prove the genuineness of the share capital introduced during the year. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

4. Rival contentions have been heard and the submissions made have been examined. During the course of the appeal, the Ld. AR relied upon the decision of Coordinate Bench in the case of *M/s. D.K. Industries vs. ITO* in *ITA No. 1417/KOL/2024* order dated 13.11.2024 reported in *2024 (11) TMI 766-ITAT, Kolkata* in support of the claim that since the notice issued was defective, therefore, the penalty should be cancelled. In the alternative, he requested that the order may be set aside to the Ld. CIT(A) as proper representation was not made before him and the penalty was confirmed.

5. Ld. DR on the other hand, stated that if the ground is not raised before the Ld. CIT(A), the same could not be raised before the Tribunal.

6. We have heard the rival contentions. Before the Ld. CIT(A), the assessee disputed the imposition of penalty and since there was no proper representation, therefore, the order of the Ld. AO has been confirmed. As regards the cancellation of penalty on the issue relating to the defect in the notice issued for imposition of penalty is concerned, the jurisdictional High Court has decided the issue in the case of **Principal Commissioner of Income-tax v. Thakur Prasad Sao & Sons (P.) Ltd.** [2024] 163 taxmann.com 449 (Calcutta) wherein it has been held as under:

Section 271(1B) as afore-quoted was inserted by Finance Act, 2008 (18 of 2008) with retrospective effect from 1-4-1989, which specifically provides that where any amount is added or disallowed in computing the total income or loss of the assessee in any order of assessment or reassessment of the and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceeding under the said clause (c). [Para 29]

The deeming provision as provided in sub-section (1B) was inserted by the Parliament on account of certain judgments after taking note of the judicial pronouncement. [Para 29]

Thus, sub-section (1B) of Section 271 creating a legal fiction deserves to be given full effect. [Para 30]

*It is settled law that in interpreting a statute, every effort should be made to give effect to each and every word used by the legislature. Presumption is that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors vide *Nathi Devi v. Radha Devi Gupta JT 2005 (1) SC 1 (paragraphs 12-15) : (2005) 2 SCC 271*. There cannot be any scope for Courts to undertake exercise to read something into the provision which the legislature in its wisdom has consciously omitted vide 2009 (242) ELT 162 [*State v. Parmeshwaran Subramani*]. Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. Court can iron out fabric but cannot the change the texture of fabrics. It cannot enlarge the scope of legislation or intention when language is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. Intention of legislation must be gathered from the language used. Legislative intention must be found from the provision. When negative words are used, provision shall be mandatory. Every clause in a statute be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statute. [Para 35]*

There is no ambiguity in section 271(1)(c) or section 271(1B) or in Explanation 5A to sub-section 1 of section 271(c). Therefore, one cannot assume something which is not expressed or which shall stand in conflict



with the aforesaid provisions. A plain reading of the aforesaid unambiguous provisions lead to an irresistible conclusion that if an assessee falls within the four corners of the legal fiction created by section 271(1B) and the Explanation 5A and the Assessing Officer has recorded his satisfaction of concealment of particulars of income during the course of assessment proceedings then the penalty proceedings cannot be said to be bad. [Para 36]

In the present set of facts the Assessing Officer has noted in the assessment order the concealment of particulars of income by the respondent/assessee. Notices were also directed to be issued as has been observed in the assessment orders. Once, in the assessment order the Assessing Officer has mentioned concealment of particulars of income by the assessee, the notice under section 274 is merely consequential. The respondent/assessee was well aware of the grounds of concealment of income recorded in the assessment order which he admitted. Section 274 prohibits imposition of penalty unless the assessee has been heard or has been given a reasonable opportunity of being heard. It is admitted fact of the case that the respondent/assessee was heard by the Assessing Officer who passed the penalty order. The submissions made by the respondent/assessee before the Assessing Officer in penalty proceedings, have been noted by the Assessing Officer. Thus, it is undisputed that the assessee has been heard. Under the circumstances, when a satisfaction has been recorded by the Assessing Officer during the assessment proceedings, consequential notice under section 274 was issued to the assessee and the assessee has been afforded an opportunity of being heard then the Tribunal has committed a manifest error of law and facts and has completely misdirected itself to set aside the penalty orders on the ground that 'the grounds for imposition of penalty were not mentioned in the show cause notice under section 274 and thus, the show cause notice was defective'. [Para 37]

The assessee relied upon judgment in Manjunatha Cotton And Ginning Factory (supra) to contend that 'Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c)'. In the instant notice under Section 274 for penalty under section 271(1)(c) of the Act, 1961 was issued by the Assessing Officer to the respondent assessee to afford him opportunity of hearing for concealment of particulars of income. Details of undisclosed/concealed income have been well mentioned in the assessment order of the respondent assessee and being well aware of it, the respondent assessee made specific submission in penalty proceedings. Thus, essential requirements of

section 271(1)(c) read with section 274 have been complied with. [Para 38]

When the Assessing Officer had recorded in the assessment order the particulars of concealed income/undisclosed income of the assessee and on that basis initiated penalty proceeding under section 271(1)(c) then consequential notice under section 274 issued by Assessing Officer to the assessee to afford him opportunity of hearing, was specifically a notice for penalty for concealment of particulars of income/undisclosed income. Such a notice complied with the principles of natural justice and was a valid notice under section 274. [Para 39]

7. Hence, in view of the decision of the Hon'ble Jurisdictional High Court in the case of **Thakur Prasad Sao & Sons (P.) Ltd.** (supra), the appeal was not allowable merely on the basis of the defect in the notice issued for imposition of penalty. The addition on account of share capital made at Rs. 8,36,00,000/- was confirmed by the Tribunal. It is observed that the Ld. CIT(A) issued as many as 8 notices to the assessee and as there was no compliance, the penalty imposed was confirmed. The notices were sent by email at krishnakunjtownship@gmail.com but there was no representation before the Ld. CIT(A). The assessee requested that the matter may be set aside so that proper submission could be made before the Ld. CIT(A). Thus, in order to be fair to both the assessee as well as the Revenue, we consider it necessary in the interest of justice that the order of the Ld. CIT(A) is set aside to be done *de novo* after affording an opportunity of being heard to the assessee and the assessee shall be free to raise all contentions before the Ld. CIT(A) as neither the issue of defect in the notice was raised before the Ld. CIT(A) nor any finding has been given in this regard. Hence, grounds of appeal are allowed for statistical purposes. Since the facts of AY 2008-09 are identical, even the order of AY 2008-09 is set aside to the Ld. CIT(A) to be done *de novo* after affording an opportunity of being heard to the assessee.



8. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 29th November, 2024.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 29.11.2024

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Bagaria Leasing Pvt. Ltd., FE-83, North Face Sector-III Salt Lake City, Kolkata, West Bengal, 700106.**
2. **ITO, Ward-1(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata