

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

[Before Hon'ble Shri N.V.Vasudevan, JM &amp; Shri M.Balaganesh, AM ]

**ITA No.1390/Kol/2014**Assessment Year : **2005-06**

Bidrohi Sur

-versus-

C.I.T.(A)- XXIV,

Kolkata

Kolkata

(PAN:AKXPS 3296 B)

(Appellant)

(Respondent)

For the Appellant: Shri K.K.Biswas, Advocate

For the Respondent: Shri Rajat Kumar Kureel, JCIT, Sr.DR

Date of Hearing : 23.03.2017.

Date of Pronouncement : 05.04.2017.

**ORDER****PER N.V.VASUDEVAN, JM:**

This is an appeal by the Assessee against the order dated 06.3.2014 of CIT(A)-XXIV, Kolkata, relating to AY 2005-06.

2. In this appeal the Assessee has challenged the order of the CIT(A) whereby the CIT(A) confirmed the order of the AO imposing penalty on the Assessee u/s.271(1)(c) of the Income Tax Act, 1961 (Act).

3. The facts and circumstances under which penalty u/s.271(1)(c) of the Act was imposed on the Assessee by the AO are as follows:

The Assessee is an individual. In the return of income filed for A.Y.2005-06 the assessee declared capital gain of Rs.5,77,423/-. The same was claimed as exempt because the assessee invested a sum of Rs.6,00,000/- in Capital Gain Scheme and accordingly claimed deduction u/s 54EC of the Income Tax Act, 1961 (Act). Since the capital gain in question was not the long term capital gain the claim of the assessee for deduction u/s 54EC of the Act was rejected by the AO as the claim for deduction u/s.54EC of the Act can be made only when the capital gain in question is a long term capital gain. Accordingly deduction u/s 54EC of the Act was refused. In respect of the claim for deduction made u/s 54EC of the Act which was rejected, the AO imposed penalty u/s 271(1)(c) of the Act. The same was confirmed by CIT(A).

4. Aggrieved by the order of the CIT(A), the Assessee has preferred the present appeal before the Tribunal. far as the merits of the order of CIT(A) confirming the order of the AO imposing penalty on the Assessee u/s.271(1)( c) of the Act is concerned, the Id. Counsel for the assessee submitted before us that the show cause notice issued u/s 274 of the Act before imposing penalty does not contain the specific charge against the assessee namely as to whether the assessee was guilty of having concealed particulars of income or having furnished inaccurate particulars of income. Copy of the show cause notice u/s 274 of the Act was filed before us. Perusal of the same reveals that AO has not struck out the irrelevant portion in the show cause notice and therefore the show cause notice does not specify the charge against the assessee as to whether the charge is of concealment of particulars of income or furnishing of inaccurate particulars of income.

5. The Id. Counsel for the assessee drew our attention to the decision of the Hon'ble Karnataka High Court in the case of CIT vs. SSA's Emerald Meadows in ITA No.380 of 2015 dated 23.11.2015 wherein the Hon'ble Karnataka High Court following its own decision in the case of CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 took a view that imposing of penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The Id. Counsel further brought to our notice that as against the decision of the Hon'ble Karnataka High Court the revenue preferred an appeal in SLP in CC No.11485 of 2016 and the Hon'ble Supreme Court by its order dated 05.08.2016 dismissed the SLP preferred by the department. The Id. Counsel also brought to our notice the decision of the Hon'ble Bombay High Court in the case of CIT vs Shri Samson Perinchery in ITA No.1154 of 2014 dated 05.01.2017 wherein the Hon'ble Bombay High Court following the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning factory (supra) came to the conclusion that imposition of penalty on defective show cause notice without specifying the charge against the assessee cannot be sustained. Our attention was also drawn to the decision

of ITAT in the case of Suvaprasanna Bhattacharya vs ACIT in ITA No.1303/Kol/2010 dated 06.11.2015 wherein identical proposition has been followed by the Tribunal. The learned DR relied on the order of the CIT(A).

6. We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the Id. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled.

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

**Order pronounced in the Court on 05.04.2017.**

Sd/-  
[M.Balaganesh]  
Accountant Member

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 05.04.2017.

[RG PS]

Copy of the order forwarded to:

1. Bidrohi Sur, 136, Brahma Samaj Road, Behala, Kolkata-700034.
2. A.C.I.T. Circle-21, Kolkata.
3. C.I.T.(A)- XXIV, Kolkata
4. C.I.T-VIII, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Asst. Registrar, ITAT, Kolkata Benches