

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

श्री संजय गर्ग, न्यायिक सदस्य
एवं
डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष

**Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 260/Kol/2022
Assessment Year: 2009-10**

***Anchal Towers Pvt. Ltd.....Appellant
[PAN: AACCA 3716 E]***

Vs.

ITO, Ward-4(3), Kolkata.....Respondent

Appearances by:

Sh. Somnath Ghosh, Adv., appeared on behalf of the Assessee.

Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : November 3rd, 2022

Date of pronouncing the order : November 9th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2009-10 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-2, Kolkata [in

short ld. "CIT(A)"] dated 08.01.2019 arising out of the assessment order framed u/s 271(1)(c) of the Act dated 30.06.2017.

2. The assessee is in appeal before the Tribunal raising the following grounds:

"1. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata failed to appreciate that none of the conditions precedent required to be satisfied for the assumption of jurisdiction u/s. 274 read with s. 271(l)(c) of the Income Tax Act, 1961 existed and/or have been complied with and/or fulfilled in the instant case by the Ld. Income Tax Officer, Ward 4(3), Kolkata and his specious action in upholding the impugned order dated 30-06-2017 imposing penalty in the sum of Rs. 1,91,580/- in pursuance to notice dated 14-12-2016 is therefore ab initio void, ultra vires and ex-facie null in law.

2. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata did not consider that the impugned notice dated 14-12-2016 issued u/s. 274 read with s. 271(l)(c) of the Income Tax Act, 1961 issued by the Ld. Income Tax Officer, Ward 4(3), Kolkata failed to classify the exact nature of default for invoking the mischief thereof and the impugned action in that respect is altogether arbitrary, unwarranted, and perverse.

3. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata acted unlawfully in upholding the impugned order imposing penalty of Rs. 1,91,580/- by the Ld. Income Tax Officer, Ward 4(3), Kolkata solely and exclusively relying upon the findings in the quantum proceedings by simply adopting the principle of res judicata without adducing on record any independent reasons in support therefor and such adverse finding de hors any compelling basis is altogether unfounded, un justified, and untenable in law.

4. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata was wholly in error in upholding the impugned order imposing penalty of Rs. 1,91,580/- passed by the Ld. Income Tax Officer, Ward 4(3), Kolkata without considering the facts of the present case in light of the Explanation 1 appended to the provisions of s. 271(l)(c) of the Income Tax Act, 1961 and the specious findings reached on such extraneous considerations not germane to the issue is totally illegal, illegitimate, and infirm in law."

3. The sole grievance of the assessee is that ld. CIT(A) erred in confirming the penalty levied u/s 271(1)(c) of the Act at Rs. 1,91,580/-. At the outset, ld. Counsel for the assessee submitted that since the notice issued u/s 274 r.w.s. 271(1)(c) of the Act was defective, therefore, the penalty proceedings deserves to be held as invalid and *void ab initio*. Ld. Counsel for the assessee also submitted that the issue stands squarely cover by the decision of Hon'ble Jurisdictional High Court in the case of *PCIT vs. Brijendra Kumar Poddar*, IA No:GA/2/2018 dated 23.11.2021.

4. Per contra, ld. D/R opposed the submissions made by the assessee and placed reliance on the judgment of Hon'ble Madras High Court in the case of *M/s. Sundaram Finance Limited vs. ACIT T.C. (Appeal) Nos. 876 & 877 of 2008* dated 23.04.2018.

5. We have heard rival contentions and perused the records placed before us. Penalty of Rs. 1,91,580/- was levied on the assessee u/s 271(1)(c) of the Act for concealment of income. Necessary satisfaction was made by ld. AO in the assessment order. However, for the purpose of initiating proceedings u/s 271(1)(c) of the Act notice u/s 274 of the Act was issued on 14.12.2016. In this notice, ld. AO ticked the line, “*have concealed the particulars of your Income or Furnished inaccurate particulars of such Income.*”

6. Perusal of this notice shows that ld. AO has mentioned both the charges in the notice rather than raising a specific charge on the assessee. Such type of notices where specific charges are not levelled against the assessee, are found to be defective by various Hon'ble Courts. Since we are bound by the Hon'ble Jurisdictional

High Court of Calcutta, we find that in the case of *Brijendra Kumar Poddar (supra)*, Hon'ble Court dealing with the similar facts and the issues, confirmed the order of the Tribunal deciding against the Revenue taking note of the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Samson Perinchery* reported in [2017] 392 ITR 4 (Bombay) dated 05.01.2017 laying down the ratio that if the show cause notice issued 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, such show cause notice are defective.

7. We, therefore, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court, are inclined to hold that since the notice issued u/s 274 of the Act is defective, penalty proceedings are invalid and bad in law and liable to be quashed. In the result, legal grounds raised by the assessee challenging the levy of penalty u/s 271(1)(c) of the Act are allowed.

8. In the result, appeal filed by the assessee is allowed.

Kolkata, the 9th November, 2022.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 09.11.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Anchal Towers Pvt. Ltd., C/o. S.N. Ghosh & Associates, Advocates, 2, Garstin Place, 2nd Floor, Suite No. 203, Off Hare Street, Kolkata-700 001.**
- 2. ITO, Ward-4(3), Kolkata.**
3. CIT(A)-2, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata