IN THE INCOME TAX APPELLATE TRIBUNAL PATNA 'VIRTUAL COURT' AT KOLKATA

[BEFORE SHRI J. SUDHAKAR REDDY, HON'BLE ACCOUNTANT MEMBER & SHRI S.S. GODARA HON'BLE JUDICIAL MEMBER]

ITA No. 203/Pat/2019
Assessment Year: 2004-05

Smt. Urmila Devi..Appellant
C/o. Nirmal & Associates, Chartered Accountants,
Nepali Kothi, Opp. Gasoline Petrol Pump, Boring Road,
Patna – 800 001.
[PAN: AFZPK 6824 L]

ACIT, Central Circle -3, Patna ....Respondent
Patna.

Appearances by:
Shri Nishant Maitin, C.A. appearing on behalf of the Assessee.
Shri Inderjit Singh, CIT DR appearing on behalf of the Revenue.

Date of concluding the hearing : September 22, 2020
Date of pronouncing the order September 22, 2020

ORDER

PER J. SUDHAKAR REDDY, HON'BLE AM

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 3, Patna, (hereinafter the "ld. CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 31/05/2019, for the Assessment Year 2004-05, wherein, he confirmed the penalty levied u/s 271(1)(c) of the Act, by the Assessing Officer .

2. After hearing rival contentions, we find that the notice issued u/s 274 r.w.s. 271(1)(c) of the Act dt. 27/12/2011, did not specify the charges against which the penalty was sought to be imposed. The penalty imposed in pursuance of such defective notice is not sustainable in law. The Hon'ble High Court of Calcutta in the case of *Pr. CIT vs. Dr. Murari Mohan Koley in ITAT No. 306 of 2017, G.A. No. 2968 of 2017*, judgment dt. 18th July, 2018, held as follows:-

"10. The ld. 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 ld. 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 ld. 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 the Hon'ble Karnataka High Court in the case of 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).

11. 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 ld. 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. "

Mr. Chowdhury in course of argument has urged us to remand the matter before the assessing officer. According to him, this was a technical flaw, which the Revenue must be given a chance to cure. The reason why the penalty order was not sustained by the Tribunal appears from the passages of the decision of the Tribunal quoted earlier in this judgement.

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.

Under such circumstances, we do not find any reason to interfere with the Tribunal's order. The Tribunal's order does not suffer from any error of law. No substantial question of law is involved in this appeal. Hence, the same is dismissed. Hence, stay petition is also dismissed.

There shall be no order as to costs."

3. The proposition of law laid down in the above case-law is squarely applicable in the present case. We, therefore, respectfully following the said decision of the Hon'ble High Court, quash the impugned penalty imposed by the Assessing Officer under section 271(1)(c) of the Act as confirmed by the Ld. CIT(A).

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

Order Pronounced in the Open Court on 22nd September, 2020.

Sd/-	Sd/-
(S.S. Godara)	(J. Sudhakar Reddy)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 22/09/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. Smt. Urmila Devi, C/o. Nirmal & Associates, Chartered Accountants, Nepali Kothi, Opp. Gasoline Petrol Pump, Boring Road, Patna – 800 001.
2. ACIT, Central Circle – 3, Patna.
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Sr. Private Secretary
ITAT, Patna Bench