OD – 41 & 42

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
<u>ORIGINAL SIDE</u>

IA NO:GA/2/2018 (OLD NO: GA/1832/2018)
IN
ITAT/215/2018
PRINCIPAL CIT, CENTRAL – 2, KOLKATA
VS.
BRIJENDRA KUMAR PODDAR

IA NO:GA/1/2018 (OLD NO: GA/1830/2018)
IN
ITAT/215/2018
PRINCIPAL CIT, CENTRAL – 2, KOLKATA
VS.
BRIJENDRA KUMAR PODDAR

BEFORE :
THE HON'BLE JUSTICE T.S.SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATED : NOVEMBER 23, 2021.
[*Via Video Conference*]

<u>*Appearance*</u> :
Mr. Tilak Mitra, Advocate
…for appellant
Mr. R K Murarka, Advocae
Mr. S. Roychowdhury, Advocate
…for respondent

The Court :- We are satisfied with the reasons assigned in the affidavit filed in support of the application regarding the delay in filing the appeal. The delay is condoned. The application stands allowed.

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act in brevity) is directed against the order dated 22.09.2017, passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA Nos. 93 and 94/Kol/2017 relating to Assessment Years 2006-07 & 2007-08. The revenue has raised the following questions of law for our consideration :-

(a) Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal was justified in canceling/deleting the penalty imposed u/s. 271(1)(c) of the Income Tax Act, 1961 and thereby upholding the order passed by the CIT(A) on the ground that the assessee had made a suo motu declaration of the HSBC account and deposits therein before the DGIT (Inv) Kolkata and also that the asessee had paid full taxes on his own before initiation any action or issue of any notice in this regard and further tha in the show cause notice under section 274 in the printed form the irrelevant portion, viz. "furnished inaccurate particulars of income" or "concealed particulars of such income" was not struck off by the AO ?

(b) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and fact in holding that the notices under Section 274 of the Income Tax Act, 1961 were not in accordance with law ?

(c) Whether, on the facts and in the circumstances of the case and in law, imposition of penalty is a civil consequence and is bereft of the fact as to whether it was deliberate or indeliberate concealment of income and furnishing of incarnate particulars and the CIT (A) as also the Tribunal erred in law in not appreciating the same and the Tribunal as also the CIT (A) erred in law in not appreciating the same and deleting the penalty imposed upon the assessee by the assessing officer only on the grounds that the assessee had made a suomotu declaration of the HSBC account and deposits therein before the DGIT (Inv) Kolkata and also that the assessee had paid full taxes on his own before initiation any action or issue of any notice in this regard and further that in the show cause notice under section 274 in the printed form the irrelevant portion, viz. "furnished inaccurate particulars of income" or "concealed particulars of such income" was not struck off by the AO ?

(d) Whether Section 271 of the Income Tax Act, 1961 mandates recording in clear terms of satisfaction of the assessing officer about the concealment of income or furnishing of inaccurate particulars by the assessee either in the assessment order or in the notice under Section 274?

We have heard Mr. Tilak Mitra, learned Counsel for the appellant and Mr. R K Murarka learned Counsel for the respondent. The short issue which falls for consideration is whether the order passed by the Commissioner of Income Tax (Appeals) 21 Kolkata reversing the order passed by the Assessing Officer imposing penalty on the assessee under Section 271(1)(c) of the Act was justified and whether the Tribunal by the impugned order was right in confirming the order passed by the CIT (A) thereby deleting the penalty imposed. After elaborating hearing the learned Counsel for the appellant/revenue and for the respondent /assessee we find that CIT (A) has examined the factual position more particularly the form of the notice and found that notice was defective and taking note of the various decisions of the other High Courts held that penalty could not have been imposed pursuant to such a defective notice. The revenue carried the matter to the Tribunal and Tribunal re-examined the matter and agreed with the view taken by the CIT(A). We find that the Tribunal rightly took note of the decision of the High Court in CIT Vs. Manjunatha Cotton and Ginning Factory reported at (359 ITR 565) as well as other decision. The finding rendered by the Tribunal is to the following effect :-

> *"(7) It is well settled position of law that the penalty under Section 271 (1) (c) is leviable if the Assessing Officer is satisfied that the assessee has concealed particulars of his income or furnished inaccurate particulars of such income. As held by the Hon'ble Supreme Court in the case of Dilip N. Shroff [91 Taxman 218], the two expressions "concealment of particulars of income" and "furnishing of inaccurate particulars of income" are different connotations and it is imperative for the assesee to be made aware as to which of the two is*

being put against him for the purpose of levy of penalty under section 271(1)(c) so that he can defend accordingly. If the notice issued under section 274 is issued by the Assessing Officer in the standard printed proforma without striking out the irrelevant clause like in the present case, the same, in our opinion, cannot convey to the assessee as to which of the charges he has to respond and such notice issued by the Assessing Officer without application of mind is liable to treated as vague on the basis of which no penalty can be imposed on the assessee as held by the Hon'ble Karnataka High Court, inter alia, in the case of SSA's Emerald Meadows (supra) and Manjunathan Cotton & Ginning Factory (supra). Even the Hon'ble Bombay High Court in the case of Samsung Perinachery (ITA No. 1154, 953, 1097 and 1126 of 2014 dated 05.01.2017) has taken a similar view while uploading the decision of the Tribunal that the notice issued under Section 274 by the Assessing Officer in the standard format without striking off the irrelevant portion as bad in law and the order passed in pursuance of such notice imposing penalty under section 271(1)(c) was liable to be cancelled being invalid."

The decision rendered by the Tribunal is in full consonance with the law laid down by the various High Court as well as Hon'ble Supreme Court on the subject issue. The learned Senior Counsel appearing for the respondent has placed before us the decision of this case in the case of (Principal Commissioner of Income Tax – 19 Kolkata Vs.Dr. Murari Mohan Koley) dated 18th July 2018. In the said decision the Hon"ble

Division Bench took note of the various decisions including the decision in the case of Manjunatha Cotton(supra) which was affirmed by the Hon'ble Supreme Court as the appeal filed by the revenue was dismissed by the Hon'ble Supreme Court. Furthermore, the Supreme Court has also taken note of the decision of the Bombay High Court in CIT Vs. Samsung Perinachery in ITR 1154 of 2014 dated 5th January 2017 and ultimately held that the show cause notice issued under Section 274 of the Act does not specify the charge against the assessee as to whether it is concealing particulars of income or furnishing inaccurate particulars of income and, therefore, the show cause notice was defective. The decision of this Court in the case of Dr. Murari Mohan Koley (supra) will apply with full force. Thus we are of the considered view that the order passed by the Tribunal does not call for any interference. Accordingly, appeal fails and the substantial questions are answered against the revenue.

Consequently, stay application is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/D.Ghosh.