

**IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)**

ORIGINAL SIDE

**IA No. GA/1/2017
(Old No. GA/402/2017)
In
ITAT/440/2016**

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-II, KOLKATA

VS

PARMANAND AGARWAL

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

**Appearance:
Mr. Soumen Bhattacharjee, Advocate
... for the appellant.**

Heard on : December 15, 2021.

Delivered on : December 15, 2021.

T.S. SIVAGNANAM, J : This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) challenging the order dated 3rd August, 2016 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No. 34/Kol/2014 for the assessment year 2007-08.

The revenue has raised the following substantial questions of law for consideration :

- a) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal, "B" Bench, Kolkata is right in law and fact in cancelling the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 ?
- b) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal "B" Bench, Kolkata was correct in holding that since notice under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 did not spell out whether penalty is being levied for concealment or for furnishing of inaccurate particulars of income, the penalty levied consequent to the impugned notice was without jurisdiction and liable to be quashed ?

We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel appearing for the appellant/revenue and carefully perused the materials placed on record. The issue which falls for consideration is whether the order of the Tribunal deleting any penalty imposed on the respondent/assessee under Section 271 (1)(c) of the Act was justified or not. Mr. Bhattacharjee, learned Counsel for the appellant would contend that the assessee, though was given sufficient opportunity by the Commissioner of Income Tax (Appeals), Central III, Kolkata (CITA) in an appeal filed by him did not avail the opportunity and did not appear before the Appellate Authority and, therefore, Appellate Authority proceeded to consider the matter on merits and the appeal was dismissed. It is pointed out that at no earlier point of time either before the Assessing Officer or before CITA the respondent had questioned the validity of the show-cause notice dated 29th December, 2010 and for the first time the assessee raised such a contention before the Tribunal and the Tribunal ought not to have entertained such a ground. Without prejudice to the said contention, Mr. Bhattacharjee would further argue that the notice was not defective and in the notice the relevant entry was indicated with a “tick mark” and this would suffice to state that the notice issued under Section 274 of the Act was valid. We have gone through the factual position and noted the finding rendered by the Tribunal. The defect which is pointed out by the assessee in respect of the notice is a jurisdictional issue. Therefore, the assessee cannot be non-suited from

raising such a contention that too before a Tribunal, even assuming it is for the first time. This is so because the Tribunal is the last forum which will decide the factual issue. Therefore, assessee cannot be prevented from raising such a contention. We say so because in the case on hand, the assessee is an individual. It may be true that there are other decisions of the various High Courts which have refused to entertain such a ground at the appeal stage, namely the penalty notice was defective. But those decisions are distinguishable on facts and in most of the cases assessee like a big corporate house having a large legal team to advise and therefore, the question of inadvertence can never be pleaded by the assessee. In contrast to the same, the present case in which the assessee before us is an individual. Therefore, we are of the view that assessee should not be shut out from raising the jurisdictional issue. The Tribunal on going through the record and in particular, the show-cause notice dated 29th December, 2010 has recorded a finding of fact that the irrelevant portions of the show-cause notice has not been struck off and thus prejudiced the assessee from putting forth an effective objection. The Tribunal also rightly took note of the decision of the High Court of Karnataka in CIT & ANR V. MANJUNATHA COTTON AND GINNING FACTORY, reported in 359 ITR 565 (Karnataka). Thus, we find there is no error in the decision of the Tribunal nor the decision making process for us to interfere with the said order.

Accordingly, appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

(T. S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

RS/GH.