IA No. GA 2 of 2023
ITA No. 18 of 2013
IN THE HIGH COURT AT CALCUTTA
In appeal from its
SPECIAL JURISDICTION (INCOME TAX)
CIVIL APPELLATE JURISDICTION

Darwabshaw B. Cursetjee Sons Ltd.
Versus
The Commissioner of Income Tax – II, Kolkata

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 27th June 2023

Appearance:
Mr. R K. Murarka, Sr. Advocate
for the appellant

Mrs. Smita Das De, Advocate
for the respondent

The Court: The point involved in this appeal is very short.

It is a notice issued by the income tax authority under section 274 read with section 271 of the Income Tax Act, 1961. It provides for payment of penalty by any person who has failed to comply with the requirements of notices issued under the Act or has concealed the particulars of his income or furnished inaccurate particulars thereof. Such payment of penalty would be in addition to the tax payable.

Section 274 is the procedural part. It says that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. A plain reading of this provision suggests that the grounds of imposition of penalty have to be indicated to the person or assessee. Only then could he be effectively heard as to why the penalty should not be imposed under section 271 of the said Act.

Now, in this impugned notice dated 27th June 2006 under section 274 read with section 271 of the said Act all the alternative grounds on which penalty could possibly be imposed that is to say non-furnishing of return within the time specified, non-compliance with notices under the act, concealment of the particulars of income, furnishing inaccurate particulars have been mentioned but not a single ground has been identified to be applicable to the appellant.

The most important and perhaps the only substantial ground taken by Mr. Murarka, learned advocate appearing for the appellant is this absence of identification of the grounds on which penalty was sought to be imposed on the appellant by the income tax authority.

Mrs. Smita Das De, learned advocate appearing for the revenue took us extensively through the proceedings to show that the appellant assessee was fully aware of the reasons for imposition of penalty which were addressed by them in the various adjudication proceedings culminating before the Income Tax Appellate Tribunal.

But the decisions of the Supreme Court and the High Courts namely *Food Corporation of India vs. State of Punjab & Others* reported in AIR 2001 SC 250, *Amrit Foods vs. Commissioner of Central Excise, U.P.* reported in 2005 (190) ELT 433 (SC) and Division Bench judgments of this Court in ITAT 306 of 2017 with GA 2968 of 2017 [*Principal Commissioner of Income Tax – 19, Kolkata vs. Dr. Murari Mohan Koley*] passed on 18th July 2018 and ITAT 215 of 2018 with IA GA 2 of 2018 (Old No. GA 1832 of 2018) [*Principal CIT, Central – 2, Kolkata vs. Brijendra Kumar Poddar*] alongwith ITAT 215 of 2018 with IA GA 1 of 2018 (Old No. GA 1830 of 2018) [*Principal CIT, Central – 2, Kolkata vs. Brijendra Kumar Poddar*] unanimously express the opinion that any show-cause notice has to specify the charges which the noticee is required to answer. If the charges are not specified or if charges specified are so vague that a reasonable person is unable to understand the charges which he is required to answer, the notice is invalid.

On our examination of the said impugned notice it is clear that it does not indicate which charge is levelled against the respondent. In fact since the notice contains alternative heads of charges and none is marked as applicable to the assessee it could imply that none of the charges has been levelled against the assessee.

For all these reasons, this notice dated 27th June 2006 is incurable and could not have been the foundation of penalty proceedings against the assessee.

We declare this impugned notice dated 27th June 2006 under section 274 read with section 271 of the said Act to be a nullity.

The questions of law, which this court was called upon to answer by the order dated 31st July 2013 admitting the appeal, are answered in favour of the respondent assessee to the extent that the said notice dated 27th June 2006 under sections 271/274 of the Income Tax Act, 1961 against the assessee is declared invalid.

All other rights and remedies of the parties are kept open.

The appeal (ITA 18 of 2013) and the connected application (IA No. GA 2 of 2023) are disposed of by this order.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose