

OD27

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/144/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS
VIRENDRA KUMAR SURANA , HUF

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM

-A N D-

HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : November 06, 2024.

Appearance :
Mr. Prithu Dudhoria, Adv.
...for appellant

Mr. Rajarshi Chatterjee, Adv.
Mrs. Suman Sahani, Adv.
...for respondent.

The Court :- This appeal is filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 21st August, 2023 passed by the Income Tax Appellate Tribunal, “B” Bench, Kolkata in ITA No.354/Kol/2023 for the assessment year 2012-13.

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

1. Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in deleting the penalty of Rs.1,27,107/- imposed under Section 271(1)(c) of the Act on the ground that show cause notice issued under section 274 does not specify the charge for which penalty is being imposed against the assessee without considering the fact that the assessee failed to adduce any satisfactory explanation before the Assessing Officer during the course of penalty proceedings to rebut the findings furnishing in accurate particulars of income which is liable to penalty under Section 271(1)(c) of the Act ?
2. Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in deleting the penalty imposed by the Assessing Officer and upheld by the CIT(A) without considering the judgment reported in the cases of Grass Field & Resorts P Ltd. vs. Deputy Commissioner of Income Tax 388 ITR 395 (Raj), Union of India vs. Dharmendra Textile Processors (2008) 13 SCC 369 and CIT vs. Atul Mohan Bindal (2009) 9 SCC 589?

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant and Mr. Rajarshi Chatterjee, learned counsel appearing for the respondent.

The short issue which falls for consideration in the instant case is that whether the learned Tribunal is right in allowing the appeal filed by the assessee and setting aside the penalty proceedings which was initiated under section 271(1)(c) of the Act by order dated 23rd March, 2023. The sole ground canvassed by the assessee before the learned Tribunal was that the notice issued under section 274 read with section 271(1)(c) of the Act was defective inasmuch as irrelevant portions of the notice were not struck off and as such the assessee did not have proper opportunity to put forth their submission. In support of their submission, several decisions have been referred to by the assessee including decision of this Court. The learned Tribunal following the said decision held that the issue raised before it is no longer *res integra* and on facts the Assessing Officer has not specified the charge for which the assessee has been foisted with the penalty and therefore, the show-cause notice issued under section 274 of the Act was defective. Secondly, the penalty proceedings were set aside.

Learned standing counsel for the appellant apart from referring to the decision in the case of *Grass Field & Resorts P. Ltd. vs. Deputy Commissioner of Income Tax 388 ITR 395 (Raj.)* and the decision of the Hon'ble Supreme Court in *Union of India vs. Dharmendra Textile Processors (2008) 13 SCC 369* and *CIT vs. Atul Mohan Bindal (2009) 9 SCC 589*, relied upon a decision of a Division Bench of this Court in the case of *Principal Commissioner of Income Tax-1, Kolkata vs. M/s. Thakur Prosad Sao & Sons Pvt. Ltd., ITA/66/2018*. So far as

the said decision is concerned, we find that the decision of this Court rendered in *Principal Commissioner of Income Tax-2 vs. Industrial Safety Products (P.) Ltd.*, (2023) 154 taxmann.com 433(Calcutta) was not noticed. In the said decision the Court has take note of various decisions including decision of Karnataka High Court in the case of *CIT vs. Majunatha Cotton And Ginning Factory*, (2013) 359 ITR 565, which decision was affirmed by the Hon'ble Supreme Court in the case of *CIT vs. SSA's Emerald Meadows* (2016) 73 taxmann.com 248 (SC) .

The first issue to be considered is whether the decision in the case of *M/s. Thakur Prosad Sao & Sons Pvt. Ltd.* (supra) has been pressed into service in the instant case. We find the decision largely revolved upon the facts of the said case where the assessee had admitted to the concealment of income and the matter proceeded on those lines. It is no doubt true that Court also referred to the various decisions of this Court including decision in *Industrial Safety Products Pvt. Ltd.* However, we are of the view that the decision in *M/s. Thakur Prosad Sao & Sons Pvt. Ltd.* is couched on a different set of facts and therefore, cannot be pressed into service in the instant appeal to support the case of the revenue.

Be that as it may, we have to first consider the facts of the present case. The Assessing Officer confronted the assessee by issuing notice on the ground that the assessee dealt with penny stocks and the claim for long-term capital gain was not justified. The assessee initially sought to justify their share

transaction but ultimately accepted the allegations made by the Assessing Officer in the show-cause notice which resulted in an assessment order and the assessee had also paid tax. Subsequently, penalty proceedings were initiated and the notice under section 274 was issued. The first notice was issued to the assessee on 28th November, 2019 calling upon the assessee to show cause as to why an order imposing penalty should not be made. The assessee did not reply. Another show-cause notice was issued on 3rd December, 2020 to the same effect and the assessee once again did not submit any reply. Subsequently the matter was dealt with by the Faceless Assessment Proceedings Unit and a show-cause notice was issued on 11th May, 2021 for which the assessee submitted a report which has been quoted by the Assessing Officer in the order dated 25th January, 2022. On perusal of the same, we find that the assessee has not raised any objection with regard to the form of the notice or made any allegation that the notice issued under section 274 read with section 271(5)(c) of the Act to be defective or inaccurate. On the other hand, the assessee had contested the matter on merits. The assessee was heard and thereafter the order of penalty was passed on 25th January, 2022. Thereafter it will be too late for the assessee to now contend that the show-cause notice was defective, more particularly, the assessee submitted to the jurisdiction, gave their reply on merits, without raising any objection to the show-cause notice the manner in which the show-cause notice was issued.

Therefore, we find on facts the Tribunal ought to have considered this aspect and not-suited the assessee rather than allowing the appeal filed by the assessee.

Thus, for the above reasons, the appeal filed by the revenue was allowed and the substantial questions of law are answered in favour of the revenue and the order of penalty stands revived.

The application stands closed.

(T.S. SIVAGNANAM, CJ)

(HIRANMAY BHATTACHARYYA, J.)