

Dr. Brajbala Tiwari
ITA No.682 to 684/Ind/2018

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE'BLE SHRI KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE'BLE SHRI MANISH BORAD, ACCOUNTANT
MEMBER

ITA No.682 to 684/Ind/2018

Assessment Years 2008-09,2011-12 & 2013-14

| | | |
|----------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------|
| Dr. Brajbala Tiwari, Life Care Hospital Ltd, Plot No.2, Scheme No.78, Part-II, Vijay Nagar, Indore (Appellant) | Vs. | DCIT, Central-1, Indore (Respondent) |
| PAN ABAPT7401P | | |

| | |
|-----------------------|--------------------------|
| Revenue by | Shri Rajeeb Kumar, Sr.DR |
| Assessee by | Shri Anil Khandelwal, CA |
| Date of Hearing | 12.09.2019 |
| Date of Pronouncement | 27.09.2019 |

ORDER

PER MANISH BORAD, AM.

The above captioned appeals are filed at the instance of assessee pertaining to Assessment Years 2008-09, 2011-12 & 2013-14 are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-III (in short 'Ld.CIT(A)'), Indore dated 13.06.2018 which are arising out of the order u/s 271(1)(c) of the

Dr. Brajbala Tiwari
ITA No.682 to 684/Ind/2018

Income Tax Act 1961(In short the 'Act') dated 28.09.2016 framed by
DCIT (Central)-1, Indore.

2. Assessee has raised following grounds of appeal;

ITA No.682/Ind/2018
Assessment Year 2008-09

(1) On the facts and in the circumstances of the case Ld. CIT (A) III erred in law in imposing penalty on wrong assumptions based on patently wrong facts while confirming levy of penalty u/s 271(1)(c) and application of explanation. 5 A of section 271(1)(c) thereon.

(2) On the facts and in the circumstances of the case Ld. CIT (A) III erred in heavily relying on the seized document BS-16 though not pertaining to relevant assessment year while confirming penalty levied U/S 271(1) (c) in view of the fact that [earned A.O. did not consider BS-16 in penalty order.

(3) On the facts and in the circumstances of the case, Ld. CIT (A)III committed breach of natural justice while considering seized BS - 16 in not giving opportunity to appellant to explain her stand effectively on the same, causing prejudice to appellant.

(4) On the facts and in the circumstances of the case Ld. CIT (A)-III erred in law and on facts in confirming penalty levied U/S 271(1) (c).

(5) Appellant reserves right to add, alter, amend only grounds of appeal.

ITA No.683/Ind/2018
Assessment Year 2011-12

(1) On the facts and in the circumstances of the case Ld. CIT (A) III erred in law in imposing penalty on wrong assumptions based on patently

wrong facts while confirming levy of penalty u/s 271(1)(c) and application of explanation. 5 A of section 271 (1) (c) thereon.

(2) On the facts and in the circumstances of the case Ld. CIT (A) III erred in heavily relying on the seized document BS-16 though not pertaining to relevant assessment year while confirming penalty levied U/S 271 (1) (c) in view of the fact that [earned A.O. did not consider BS - 16 in penalty order.

(3) On the facts and in the circumstances of the case, Ld. CIT (A)III committed breach of natural justice while considering seized BS-16 in not giving opportunity to appellant to explain her stand effectively on the same, causing prejudice to appellant.

(4) On the facts and in the circumstances of the case Ld. CIT (A) -III erred in law and on facts in confirming penalty levied U/S 271 (1) (c).

(5) Appellant reserves right to add, alter, amend only grounds of appeal.

ITA No.684/Ind/2018
Assessment Year 2013-14

(1) On the facts and in the circumstances of the case Ld. CIT (A) III erred in law in imposing penalty on wrong assumptions based on patently wrong facts while confirming levy of penalty u/s 271(1)(c) and application of explanation. 5 A of section 271 (1)(c) thereon.

(2) On the facts and in the circumstances of the case Ld. CIT (A) III erred in heavily relying on the seized document BS-16 though not pertaining to relevant assessment year while confirming penalty levied U/S 271 (1) (c) in view of the fact that [earned A.O. did not consider BS - 16 in penalty order.

(3) On the facts and in the circumstances of the case, Ld. CIT (A)III

committed breach of natural justice while considering seized BS-16 in not giving opportunity to appellant to explain her stand effectively on the same, causing prejudice to appellant.

(4) On the facts and in the circumstances of the case Ld. CIT (A)-III erred in law and on facts in confirming penalty levied U/S 271(1) (c).

(5) Appellant reserves right to add, alter, amend only grounds of appeal.

3. As the issues raised in both the appeals are similar in nature relating to the same assessee they are heard together and being disposed off for sake of convenience and brevity.

4. During the course of hearing Ld. Counsel for the assessee raised additional legal ground challenging the validity of notice issued u/s 274 r.w.s. 271(1)(c) of the Act of the Act claiming it to be illegal and bad in law. We find that though the assessee has not raised the legal ground at the time of filing the appeal but in our considered opinion and following the ratio of judgment of Hon'ble Apex Court in the case of National Thermal Power Company Limited 229 ITR 383(SC) as well as in the case of Jute Corporation of India 178 ITR 668 (SC) the additional legal grounds raised before us deserves to be admitted for adjudication, if the same involves point of law which does not require any further investigation of facts. It is

also clear that the issues raised in the additional ground of appeal goes to the root of the jurisdiction of the Assessing Officer to levy the penalty u/s 271(1)(c) of the Act and therefore the same are relevant to determine the liability of the assessee for penalty u/s 271(1)(c) of the Act. Accordingly the additional ground is admitted for adjudication.

5. Briefly stated facts as culled out from the records are that the assessee is a Doctor specialized in gynecologist and infertility and Managing Director of Life Care Hospital Limited. She is provided a residential accommodation in the hospital premises. A search u/s 132 were carried out at the hospital as well as residential premises of Dr. Brajbala Tiwari on 04.10.2013. Assessments u/s 153A of the Act were completed on 22.03.2016. During the course of assessment proceedings the appellant voluntarily offered estimated additional income from clinic. After considering the submissions of the assessee, assessments were completed for the years under appeal after making the additions on various counts.

6. The penalty proceedings were initiated u/s 271(1)(c) for Assessment Years 2008-09, 2011-12 and 2013-14. In the penalty

proceedings after considering the submissions of the assessee Ld. A.O levied penalty of Rs.50,000/-, Rs.2,10,000/- and Rs.2,60,000/- u/s 271(1)(c) of the Act. Against the penalty order assessee preferred appeal before Ld. CIT(A) and could not succeed.

7. Aggrieved assessee is now in appeal before the Tribunal challenging the legality of the penalty proceedings as well as raising grounds on merits challenging the penalty levied u/s 271(1)(c) of the Act at Rs. 50,000/-, Rs.2,10,000/- and Rs.2,60,000/-.

8. Ld. Counsel for the assessee submitted that as per provisions of Section 271(1)(c) of the Act the penalty can be initiated either for concealing the particulars of income or for furnishing inaccurate particulars of income, whereas the Ld.A.O has not recorded any charge on the assessee, as to whether penalty is to be levied for 'furnishing inaccurate particulars of income or concealing the particulars of income'. Placing reliance on the judgments mentioned in the written submission which mainly includes judgment of jurisdictional High Court in the case of *PCIT Vs Kulwant Singh Bhatia ITA No.9 of 2018 dated 9.5.2018*, the Ld.

Counsel for the assessee contended that the Ld.A.O has failed in comply the provisions of section 271(1)(c) of the Act by initiating the penalty proceedings with no specific charge. Reliance was also placed on Indore Tribunal decision in the case of *Varad Mehta V/s DCIT-1 Bhopal ITA No.693/Ind/16 dated 06.12.2018*.

9. Per contra Departmental Representative vehemently argued supporting the orders of lower authorities.

10. We have heard rival contentions and perused the records placed before us. The issues raised by the assessee revolves around the levy of penalty u/s 271(1)(c) at Rs. 50,000/-, Rs.2,10,000/- and Rs.2,60,000/-. The assessee raised a legal issue pleading that Ld. A.O has wrongly initiated the penalty proceedings by not specifying the charge for levy of penalty i.e. whether the penalty proceedings has been initiated for concealing particulars of income or for furnishing the inaccurate particulars of income. It was also pleaded by the Ld. Counsel for the assessee that the Ld. A.O remained silent by not specifying as for which charge the penalty proceedings have been initiated.

Dr. Brajbala Tiwari
ITA No.682 to 684/Ind/2018

11. To examine this fact we have gone through the impugned notice issued on 30.10.2012 for initiating the penalty proceedings u/s 271(1)(c) of the Act for Assessment Years 2008-09, 2011-12 and 2013-14. For reference we reproduce below the notice u/s 274 r.w.s. 271(1)(c) of the Act for Assessment Year 2008-09;

**OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
(CENTRAL)-1, INDORE**

Room No. 101, AaykarBhawan(Main), Opp. WhiteChurch, Indore

F. No. DCIT-(Cent.)-1/Penalty/16-17 Dated: 16/09/2016

P AN- ABAPT7 401 P

Smt. Brajbala Tiwari

Life Care Hospital

scheme No.78, Part-II,

VijayNagar, Indore.

To

Madam,

**Sub: Penalty fixation u/s 271(1)(c) r.w.s. 129 of the
Income Tax Act, 1961- reg:**

Please refer to the above

The following penalty proceedings are initiated during assessment as mentioned below.

| Sl.No. | A.Y | Section | Penalty initiated on |
|--------|---------|-----------|----------------------|
| 1 | 2008-09 | 271(1)(c) | 22/03/2016 |

You are requested to appear before the undersigned on **19/09/2016 at 11 A.M.** in my office at Room No. 101, Aayakar Bhawan, Main Building, Opp. White Church, Indore personally or through authorized representative **to show cause as to why penalty u/s 271(I)(c) of the Income Tax Act, 1961 be not levied against you.** If you do not wish to appear personally, you may send your written reply on or before above mentioned date. If any response is not received in the office of the undersigned it will be assumed that you have nothing to say in this regard. **It is to be brought to your notice that there is a change in incumbent hence this notice is issued to provide opportunity of being heard to the assessee.**

Sd/-

(Avaneesh Tiwari)

Deputy Commissioner of Income Tax-(Central)-1

Indore

12. From perusal of the above show cause notices we find that the Ld.A.O has merely mentioned the section but the specific charge i.e. whether the penalty have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income has not been mentioned. Now whether such type of notice which does not speak about the specific charge leveled against the assessee is valid and tenable in the eyes of law needs to be examined in light of judicial precedents.

13. We find that similar issue came up for adjudication before us in the case of Varad Mehta ITA No.693/Ind/16 dated 06.12.2018 (*supra*) wherein we have decided the issue in favour of the assessee after relying on the judgment of jurisdictional High Court in the case of Shri Kulwant Singh Bhatia (*supra*) observing as follows. Relevant extract of our decision is reproduced below;

“14. We find that similar issue came up before the jurisdictional High Court in the case of Shri Kulwant Singh Bhatia (supra) wherein the Hon'ble Court discussed the judgment of Hon'ble High Court in the case of CIT V/s Manjunatha Cotton Ginning Factory (supra) and CIT V/s SSA's Emerald Meadows (supra) held that “on due consideration of the arguments of the Ld. counsel for the appellant, so also considering the fact that the ground mentioned in show cause notice would not specify the requirement of law, as notice was not specific, we are of the view that Ld. Tribunal has rightly allowed the appeal of the assessee and set aside the order of penalty enforced by the authority”.

15. Similarly in the case of CIT V/s Manjunatha Ginning Factory, Hon'ble High Court of Karnataka held that “the notice issued u/s 274 r.w.s. 271(1)(c) of the Act should specifically mention the ground in section 271(1)(c) whether concealment of income or for furnishing in accurate particulars of income. Sending printed form where all ground of section 271(1)(c) would not mentioned the specific requirement of law. Assessee should know the grounds on which he has charged specific otherwise opportunities of natural justice denied. On the basis of such proceedings no penalty could be imposed to the assessee. Taking up the penalty proceedings on one limb and finding the assessee in another limb is bad in law”. Though in the instant appeal the Ld. A.O has made proper

satisfaction in the body of the assessment order but in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act he failed to mention the limbs for which penalty proceedings have been initiated. It is the negligence of the Ld. A.O in not making proper specific charge in the notice u/s 274 about the addition for which penalty proceedings have been initiated. Ld. A.O should be clear as to whether the alleged addition goes under the limb of “concealment of particulars of income” or “furnishing inaccurate particulars of income”. Merely issuing notice in general proforma will negate the very purpose of natural justice as held by the Hon'ble Apex Court in the case of Dilip N Shraf 161 Taxmann 218 that “the quasi- criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice.

14. We therefore respectfully following above referred judgments and in the given facts and circumstances of the case are of the considered view that the alleged notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 31.12.10 is invalid, untenable and suffers from the infirmity of non application of mind by the Assessing Officer. We accordingly direct to delete the penalty of Rs.16,00,000/- imposed u/s 271(1)(c) on this ground itself. We accordingly allow the additional ground raised by the assessee on the legality of the penalty proceedings initiated u/s 271(1)(c) of the Act. Since the penalty u/s 271(1)(c) also has been dealt on the preliminary points other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are rendered academic in nature and the appeal of the assessee for the Assessment Year 2008-09 is allowed”.

14. We therefore respectfully following above referred judgments and in the given facts and circumstances of the case are of the considered view that the alleged notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 22.03.2016 is invalid, untenable and

suffers from the infirmity of non application of mind by the Assessing Officer. We accordingly direct to delete the penalty of at Rs. 50,000/-, Rs.2,10,000/- and, Rs.2,60,000/- for Assessment Years 2008-09, 2011-12 and 2013-14 respectively imposed u/s 271(1)(c) on this legal ground itself. We accordingly allow the additional ground raised by the assessee on the legality of the penalty proceedings initiated u/s 271(1)(c) of the Act. Since the issue of penalty u/s 271(1)(c) also has been dealt on the preliminary points other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are rendered academic in nature and thus the appeal of the assessee for the Assessment Years 2008-09, 2011-12 & 2013-14 are partly allowed.

15. In the result the legal ground of the assessee in for years 2008-09, 2011-12 & 2013-14 are allowed and grounds on merits for Assessment Year 2008-09, 2011-12 & 2013-14 are dismissed as infructuous.

Dr. Brajbala Tiwari
ITA No.682 to 684/Ind/2018

The order pronounced in the open Court on 27.09.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 27 September, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore