

Smt. Neena Verma
ITA No.689/Ind/2018

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

ITA No.689/Ind/2018
Assessment Year 2009-2010

Smt. Neena Verma, F-2, Officer's Colony, Dhar	Vs.	Income Tax Officer, Dhar
(Appellant)		(Respondent)
PAN No.ADZPV5270F		

Revenue by	Shri R.P. Mourya, Sr.DR
Assessee by	Shri S.S. Deshpande,CA
Date of Hearing	26.06.2019
Date of Pronouncement	27.06.2019

ORDER

PER MANISH BORAD, AM.

This appeal is filed at the instance of the assessee pertaining to Assessment Year 2009-10 and is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I (in short 'CIT(A)'), Indore dated 01.06.2018 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 30.03.2016 framed by ITO, Dhar.

2. Brief facts of the case as culled out from the records are that the assessee is an individual deriving income from salary and house property. Income at Rs.2,83,000/- declared in the return of income filed on 7.08.2009. Case of the assessee was reopened by issuance of notice u/s 148 of the Act for the income received in the form of electoral fund which escaped the

assessment. During the course of assessment proceedings assessee agreed to include the said amount as her income. It was submitted that the assessee was in genuine belief that the amount received from General Electoral Trust is not taxable and the amount is for spending in the elections. Total amount was already spent for the purpose of elections. However, Ld. A.O initiated the proceedings u/s 271(1)(c) of the Act for concealment of income and levied penalty at Rs.50,000/- u/s 271(1)(c) of the Act. Assessee appeal before the Ld. CIT(A) did not bring any relief. Now the assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee requested for deleting the penalty by submitting that the assessee was of genuine belief that the amount of Rs.2,00,000/- received from General Electoral Trust was exempt from tax and this amount has already been spent and nothing is left with the assessee. Ld. Counsel also submitted that the impugned notice issued u/s 271(1)(c) r.w.s. 148 of the Act suffers from technical error as no specific charge has been leveled against the assessee in the notice issued.

4. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

5. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee is against the finding of Ld. CIT(A) confirming the penalty of Rs.50,000/- levied u/s 271(1)(c) of the Act. Assessee is a Member of Legislative Assembly. In order to contest the elections she received Rs.2,00,000/- from General Electoral Trust, Mumbai which was used

by her in incurring expenses towards the elections but she did not include the same in her income under a belief that the said amount is not taxable since it was already been spent during the election process. However during the course of assessment proceedings initiated by issuance of notice u/s 148 of the Act and the assessee agreed to include the said amount as income. Now whether the Ld. A.O was justified in levying penalty u/s 271(1)(c) of the Act on the amount received from General Electortal Trust at Rs. 2,00,000/-.

6. From perusal of the notice issued u/s 274 r.w.s.271(1)(c) of the Act placed at page-6 of the paper book dated 26.6.2019 we find that both the charges i.e. concealment of particulars of income as well as furnishing incorrect particulars of income are mentioned. Ld. A.O has failed to level specific charge against the assessee as to whether she has concealed particulars of income or furnished inaccurate particulars of income. In case of such failure the impugned notice issued u/s 274 r.w.s. u/s 271(1)(c) of the Act suffers from a technical defect and as held by Hon'ble Jurisdictional High Court in the case of PCIT Vs Kulwant Singh Bhatia ITA No.9 of 2018 dated 9.5.2018 such proceedings initiated by issuance of defective notice u/s 274 r.w.s. 271(1)(c) are liable to be quashed. We accordingly allow the legal issue raised by the assessee and delete the penalty of Rs.50,000/- levied u/s 271(1)(c) of the Act.

7. Since we have already quashed the penalty of Rs.50,000/- levied u/s 271(1)(c) on legal ground, adjudication of issue on merits becomes merely academic and thus infructuous.

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8. In the result the appeal of the assessee is allowed.

The order pronounced in the open Court on 27.06.2019.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 27th June, 2019

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

By Order,

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