

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.387/Ind/2017
Assessment Year:2007-08**

Dr. Sunil Jain 1, Swastik Nagar Indore (Appellant)	<u>बनाम/</u> Vs.	ACIT-1(2) Indore (Revenue)
P.A. No.ABJPJ0262B		
Appellant by	Shri Subhash Jain, CA	
Revenue by	Shri K.G. Goyal, Sr.DR	
Date of Hearing:	03.11.2020	
Date of Pronouncement:	27.11.2020	

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)(in short 'Ld. CIT(A)-I, Indore dated 15.03.2016 pertaining to assessment year 2007-08, challenging the confirmation of penalty levied u/s 271(1)(c) at Rs.3,29,891/-.

2. During the course of hearing, the assessee filed an application under rule 11 of Appellate Tribunal Rules in respect of taking additional ground of appeal which reads as under:

“ Whether on the facts and circumstances of the case penalty u/s 271(1)(c) could have been levied on the assessee in the absence of any satisfaction recorded by the Ld. AO in the show cause notice regarding the exact charge viz. either concealment or furnishing of inaccurate particulars, for which penalty u/s 271(1)(c) was imposed.”

3. Since the aforesaid ground is purely a legal ground and in view of the decision of Hon'ble Supreme Court in case of NTPC vs. CIT (1998) 229 ITR 383(SC), we admitted this additional ground for hearing. Before us, Ld. counsel for the assessee contended that the penalty, so imposed was bad in law as the same was levied in such a casual manner without specifically replying on one particular limb of levying the penalty as is evident from the notice issued u/s 271(1)(c) of the Act by the AO. He also relied upon certain judicial pronouncement on this issue.

4. On the other hand, Ld. Sr. DR defended the orders of the revenue authorities.

5. We have heard rival contentions and perused the records placed before us and carefully gone through the written submission and decisions referred and relied by the Ld. Counsel for the assessee. From going through the notice issued u/s 271(1)© of the Act, it is well evident that in the notice the specific charge/limb u/s 271(1)(c) of the Act was not mentioned. The Ld. A.O has not struck off one of the charge which is not relevant to the assessee. It is not clear as to whether the penalty has been levied for concealment of income or furnishing of inaccurate particulars of income. Therefore, the judgment of Hon'ble High Court in the case of *Pr. CIT V/s Kulwant Singh Bhatia* (2018) 33 ITJ 777(MP) is squarely applicable on this issue wherein the revenue's appeal was dismissed by the Hon'ble High Court observing as follows:-

“on due consideration of the arguments of the Learned Counsel of the respondent, so also considering the fact that the ground mentioned in show cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the Learned Tribunal has rightly relying on the decision of CIT V/s Manjunath Cotton Ginning Factory (supra) and CIT V/s SSA'S

Emeralds Meadows (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities”.

6. Since the facts and circumstances are same, we are of the view that since the AO did not specifically mentioned as to on which particular limb, the penalty proceedings were initiated, the penalty is liable to be deleted in view of the aforesaid facts in the light of jurisdictional High Court decision in case of *Pr. CIT V/s Kulwant Singh Bhatia (supra)*.

7. In result, appeal filed by the assessee is allowed.

Order was pronounced in the open court on 26.11.2020.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 27/11/2020

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore