

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 6426/DEL/2019 ( A.Y 2015-16)  
(THROUGH VIDEO CONFERENCING)**

USK Healthcare Pvt. Ltd. E-172, DDA, Naraina Vihar, New Delhi AABCU0345G <b>(APPELLANT)</b>	Vs	ITO Ward-27(1) New Delhi <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Ankit Gupta, Adv</b>
<b>Respondent by</b>	<b>Sh. Ajay Kumar, Sr. DR</b>

<b>Date of Hearing</b>	<b>14.01.2021</b>
<b>Date of Pronouncement</b>	<b>21.01.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 06/05/2019 passed by CIT(A)-9, New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

*“1. That the notice issued u/s 271 (1) (c) and order imposing penalty of Rs.4,27,082.00 by the assessing officer under said section are illegal, bad in law, and without jurisdiction as assessing officer has not mentioned in notice U/s 271 (l)(c) under which violation he has issued notice.*

*2. That in view of the facts and circumstance of the case the CIT (A) has erred in law and on facts in imposing the penalty of Rs.4,27,082.00 U/s 271 (1) (c).*

3. That, the Provisions of U/s 271(l)(c) are not at all applicable, in the facts and circumstances, because the appellant had neither concealed particulars of income nor had not filed inaccurate particulars of income and the CIT (A) has failed to appreciate that the additions are made mere on presumptions and mere change of head of income.

4. That, the CIT(A) has failed to appreciate that the assessing officer has made the addition of Rs.13,16,325.00 by treating the rental income as income from other sources, which is highly arbitrary, unjust and baseless.

5. That, the Assessing Officer has not recorded his satisfaction, regarding concealment of income in the Assessment Order passed.

6. That, the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the penalty imposed U/s 271 (l)(c) at Rs. 4,27,082.00.

7. The addition/disallowance has been made merely on the basis of rejection of explanation of the appellant and no material has been brought on record by the AO in support of said addition/disallowance hence no penalty U/s 271 (1)(c) could be levied on the basis of such a disallowance.

8. That the CIT(A) has erred in law and on facts in non-quashing of penalty proceedings u/s 271(l)(c) which is wrongly initiated by the AO.

9. Penalty proceedings have been initiated without any specific charges hence the same are liable to be set aside.

10. That in any case the penalty imposed is unjust, arbitrary and highly excessive.”

3. The assessee is engaged in the business of trading in medicines and food supplements as well as have the rental income. The return of income was filed on 28/10/2015 declaring income of Rs. 3,50,801/-. The assessment was completed on 22/11/2017 thereby making an addition of Rs. 5,417/- towards interest paid on TDS and sales tax as well as addition of Rs. 13,16,325/- relating to rental income treated as income from other sources. The assessee did not file the appeal against the assessment order as there is no tax evasion. Thereafter, the Assessing Officer initiated the penalty proceedings u/s 271(1)(c) and imposed penalty of Rs. 4,27,082/- vide order dated 16/7/2018.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessee company has already declared the receipt of Rs.2,40,00,000.00 as Rental Income under the Head of income From House Property and claimed the standard deduction @30% of Rs.72,00,000.00 u/s 24(1) of the Income Tax Act, 1961. The assessee executed the rent agreement with the tenant, the copy of same was filed during assessment proceedings. The Ld. AR further submitted that the year under consideration is the first year of receipt of the rental income declared from the Hospital. It is undisputed fact that the assessee company furnished the rent agreement during assessment proceedings and TDS was also deducted by the Tenant U/s 194I of the Income Tax Act, 1961. The Ld. AR submitted that the assessee also disclosed the fact, the land belonged to third party as contemplated from the agreement with Dr. Sarita Kalra, and after construction, the assessee company can give the constructed Hospital to Third Party. The Ld. AR further submitted that, the assessee Company has shown the investment in Construction of Hospital as non Current Investment in the Balance Sheet. In view of the above, the assessee has truly and fully disclosed/ reported all the facts and material in its Return of Income, therefore, the charge of furnishing

Inaccurate Particulars of Income charged by the assessing officer is arbitrary, unjust and against the facts and circumstances. The Ld. AR relied upon the decision of Hon'ble Jurisdictional Delhi High Court in the case of CIT vs. Amit Jain 351 ITR 74(Delhi). The addition made by Assessing Officer is due to difference of opinion and the assessee is under the bonafide belief that the said income is rental income and the same is to be assessed under the head of Income from House Property, whereas the Assessing Officer is of the view that the receipt is to be taxed under the head of Income from Other sources, therefore, the addition is made due to change of head of income, which is not justifiable for imposing the penalty for the charge of furnishing an inaccurate particulars of income. The Ld. AR relied upon the following decisions:-

- a) ACIT vs. Krishna C. Tandon (HUF) in ITA No. 2048/Mum/2016 (Mum. Tri.)
- b) CIT vs. Bennett Coleman & Co. Ltd. 33 Taxmann.com 227(Bom. HC)
- c) Price Waterhouse Coopers vs. CIT 348 ITR 306 (SC)
- d) CIT vs. Societex ITA No. 1190/2017 dated 19.07.2012

6. The Ld. DR relied upon the order of the Assessing Officer as well as penalty order and order of CIT(A).

7. We have heard both the parties and perused the material available on record. It is an undisputed fact that the assessee company furnished rent agreement during the assessment proceedings and TDS was deducted by the tenant u/s 194I of the Income Tax Act. The assessee also disclosed the fact that the land belong to third party and the agreement with Dr. Sarita Kalra and after construction, the assessee company can give the constructed hospital to third party. The assessee company also disclosed the investment in construction in hospital as non current investment in balance-sheet. Thus, the assessee fully and truly disclosed the return of income and, therefore, the charge of furnishing inaccurate particulars of income by the Assessing Officer is not valid. The reliance of decision in case of CIT Vs. Amit Jain 351, ITR 74

Delhi that of Jurisdictional High Court is very apt in the present case. Therefore, the CIT(A) was not right in dismissing the contentions of the assessee and confirming the partial penalty. Thus, the appeal of the assessee is allowed.

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

**Order pronounced in the Open Court on this 21<sup>st</sup> Day of JANUARY , 2021.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 21/01/2021  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI