

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. Nos. 1047, 1048 & 1049/HYD/2010

Assessment Years: 2002-03, 2003-04 & 2004-05

M/s.Sri Jyothi Medical Hall,
HYDERABAD
[PAN: AAWFS0494G]

Income Tax Officer,
Vs Ward No.5(2)
HYDERABAD

(Appellant)

(Respondent)

For Assessee : NONE

For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 23-03-2021

Date of Pronouncement : 04-05-2021

ORDER

PER S.S.GODARA, J.M. :

These three assessee's appeals for AYs.2002-03 to 2004-05 arise from the CIT(A)-V Hyderabad's separate orders, all dated 07-05-2010, passed in appeal Nos.283, 284 & 285/ ITO,W-5(2) / CIT(A)-V / 2007-08; in proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both parties. Case files perused.

2. It transpires at the outset that we need not delve much deeper in the facts of the instant cases. Suffice to say, both the learned lower authorities have imposed Section 271(1)(c) penalties on the assessee in view of the disallowance(s)/addition(s) made in the course of quantum assessment(s) upheld upto tribunal order dt.29-09-2017 in ITA Nos.473 to 475/Hyd/2007 respectively.

3. Coming to the impugned identical penalties of Rs.9,20,000/-, Rs.8,60,000/- and Rs.9,60,000/-; respectively, we notice from a perusal of the case files and with the able assistance coming from Revenue's side that the Assessing Officer's identical corresponding show cause notice(s); all dt.23-03-2006, had nowhere specified as to under which limb he proposed to take recourse to the penal mechanism under the provisions of the Act. Hon'ble jurisdictional high court's decision in Pr.CIT Vs. Baisetty Revathi (2017) 398 ITR 88 (Telangana & AP) holds that such a default renders the impugned penalty invalid.

4. Mr.Pandey quoted (2017) 84 taxmann.com 51 (Mum), Sundaram Finance Ltd. (2018) 93 taxmann.com 250 (Madras), ITA No.1519/Hyd/2019, dt.28-11-2017 Jyothirmoy Yamsani Vs. DCIT upholding identical penalties after concluding that such a failure is very much condonable. None of the said decision could apply to the exclusion of the hon'ble jurisdictional high court's foregoing judgment. We therefore

direct the Assessing Officer to delete the impugned penalty(ies) for this precise reason alone.

5. These assessee's appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 4th May, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 04-05-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.M/s.Sri Jyothi Medical Hall, C/o.Tejprakash Toshniwal, Advocate, 4-1-6/B/4, Ramkote, Hyderabad.

2.The Income Tax Officer, Ward-5(2), Hyderabad.

3.CIT(Appeals)-V, Hyderabad.

4.CIT-IV, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.