

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

**ITA Nos. 5098 to 5104/Del/2017
Assessment Years: 2006-07 to 2012-13**

M/s. Aditya Medicos Pvt. Ltd.,
C-30, Panchsheel Enclave,
New Delhi.

vs. ACIT Central Circle-6,
New Delhi.

PAN : AAFCA 0411R
(Appellant)

(Respondent)

Appellant by : Sh. P.C. Yadav, Advocate
Respondent by: Sh. Sanjay Tripathi, Sr. DR

Date of hearing: 02.09.2021
Date of order : 02.09.2021

ORDER

PER BENCH:

All these appeals have been preferred by the assessee against separate orders dated 29.06.2017 passed by the Id. CIT(A)-24, New Delhi in the penalty matters for the assessment years 2006-07 to 2012-13.

2. Since the grounds raised by the appellant in all these appeals are identical except the amounts of penalty imposed and the facts involved therein are similar, all these appeals are being disposed of by

way of this common order for the sake of convenience and brevity. First of all, we would like to take up ITA No. 5123/Del/2017 for the assessment year 2006-07, wherein, the assessee has taken following grounds of appeal :

"1. That the Ld. CIT(Appeal) has erred in upholding the penalty of Rs.9,42,480/-, imposed by the A.O., invoking the provisions of sec. 271(1)(c) of IT Act 1961.

2. That the Ld. CIT(Appeal) has erred in upholding the penalty of Rs.9,42,480/-, without considering the facts and circumstances of the case and relying on irrelevant judicial pronouncements.

3. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence."

3. Apart from the above said grounds, the assessee has also taken an additional legal ground first time before us as follows :

"a). On the facts and under the circumstances of the case the penalty levied under section 271(1)(c) of the Act is void as the notice u/s. 274 read with sec. 271 is bad and defective as it is issued without deleting the appropriate clause under which the penalty is proposed to be imposed is either for filing of inaccurate particulars of income or concealment of particular of income and as such the notice is not sustainable and not curable."

4. Brief facts of the case are that a search & seizure operation u/s. 132 of the IT Act, 1961 was conducted at business premises of companies of Rockland group as well as at the residential premises of directors of the companies on 06.09.2011. A notice u/s. 153A was issued to the assessee, in response to which return of income declaring NIL income was filed by the assessee on 03.12.2012. During

the pendency of assessment, the assessee approached the Settlement Commission u/s. 245C of the Act in the capacity of a person related to other assesseees of the Rockland Group and declared an additional income of Rs.28,00,000/-. However, the application of the assessee was rejected by the Settlement Commission holding that the assessee does not qualify as a person “related to the specified person”. Thereafter, assessment u/s. 153A of the Act was completed on 20.06.2014 at an income of Rs.86,19,500/- by making following additions of Rs.56,50,000/- on account of unexplained cash credit, addition of Rs.1,69,500/- on account of unexplained expenditure and addition of Rs.28,00,000/- on account of additional income declared before the Settlement Commission.

5. In quantum appeal, filed by assessee before the Id. CIT(A), the Id. CIT(A) sustained the addition of Rs.28,00,000/- made on account of additional income declared before the Settlement Commission and deleted the remaining additions. Based on these additions, penalty proceedings were initiated against the assessee and a penalty of Rs.9,42,480/- was imposed against the assessee u/s. 271(1)(c) of the Act.

6. Thereafter, against the levy of penalty by the Id. Assessing Officer, assessee preferred first statutory appeal before the Id. CIT(A), who dismissed the appeal of the assessee with following observations:

“4.2.6. Before parting with the matter, it is necessary to deal with the objections made on legal grounds. It has been contended that neither the assessment order, nor the penalty notice, nor the penalty order have mentioned as to under which limb of Sec.271(1)(c) has the penalty been levied i.e., whether for ‘concealment of income or for ‘furnishing of inaccurate particulars of income, and as such the penalty is vitiated. The jurisdiction issue needs to be addressed as to whether appellant was aware of the specific limb of section 271(1)(c) under which he was being charged. The appellant has not furnished the copy of the penalty notice for verification, but in my view, it is immaterial, once we examine the contents of the assessment order on basis of which the satisfaction has been recorded by the A.O, for initiating penalty. In respect of the additional income disclosed in the Settlement application, the assessment Order records that provisions of Sec, 271(1)(c) are clearly attracted on the amount since the “assessee has not disclosed the above income” (emphasis provided), This is nothing but stating, in a different way, that the appellant has concealed its income. No doubt, the exact phrase has not been used, but is necessary to look into the intent, rather than the exact words. The intent should be discernible from the assessment order. There is yet another addition on which penalty has been levied, but no explanation adduced on merits, viz., the unexplained cash credit amount , which has not been included in the disclosure made before the Settlement commission in the hands of the flagship companies of the Rockland group. The A.O. has in fact, while dealing with this matter, specifically mentioned that penalty provisions of Sec 271(1)(c) are attracted as the assessee has “concealed the income to the extent of unexplained cash credit”. The commission amount paid to arrange for amount to flow through the books of account is paid is also paid outside the books and clearly is “concealed income” and not “inaccurate particulars of income”.

7. We have gone through the record including the impugned orders of the authorities below. Learned DR opposed raising of additional legal ground by saying that before the lower authorities, this ground was not taken up by the assessee and moreover, he needs to verify from the assessment record about the factual correctness of the legal ground. Therefore, at this stage, same should not be admitted.

8. We have heard both the sides and we are of the considered opinion that the legal ground can be taken at any stage and the assessee cannot be barred for raising first time any legal ground at this stage. Thus, we admit the additional ground raised by the Id. AR. The contention of the Id. AR is that the Id. Assessing Officer has simply initiated penalty proceedings without recording his clear satisfaction and without mentioning any specific charge against the assessee in the notice issued for imposition of penalty. It is now very well settled by Hon'ble Apex Court in the matter of CIT vs. SSA's Emerald Meadows - (2016) 73 taxmann.com 248 (SC), wherein it is held that in such cases, notice issued for assuming jurisdiction u/s. 271(1)(c) should be unambiguous. Learned AR also cited an order dated 19.10.2020 of coordinate Bench in the case of Akhil Meditech (ITA No. 5118/Del/2017), wherein, in the similar facts and circumstances, wherein Akhil Meditech was also subjected to the same search and seizure, and ITAT quashed the penalty proceedings and deleted the penalty imposed against the assessee with the following observations :

"6. We have considered the rival submissions and perused the material on record. Learned Counsel for the Assessee referred to the show cause notices issued by A.O. before levy of the penalty Dated 20.06.2014, the same are bad in Law as it did not specify under which limb of Section 271(1)(c) of the I.T. Act the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. In the case of CIT vs. M/s. SSA's Emerald Meadows 73 taxmann.com 241 (Karn-HC.) the Hon'ble Karnataka High Court dismissed the Departmental Appeal in which the Tribunal allowed the appeal of assessee on the same reason by following its earlier decision in the case of CIT & Another vs., Manjunatha Cotton and Ginning Factory

[2013] 359 ITR 565 (Karn-HC.). The Judgment of Hon'ble Karnataka High Court have been affirmed by dismissing the SLP of the Department reported in 73 taxmann.com 248. The Hon'ble Delhi High court in the case of Pr. CIT vs. M/s. Sahara India Life Insurance Company Ltd., 2019-(8)-TMI-409-(Del.-HC) vide Judgment Dated 02.08.2019 in paras 21 and 22 held as under :

"21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1) (c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No.11485 of 2016 by order dated 5th August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises."

6.1. In view of the above, since the issue of notice itself is bad in Law, therefore, it vitiate the entire penalty proceedings and as such, the penalty proceedings are liable to be quashed. In view of the above discussion, we set aside the Orders of the authorities below and quash the penalty proceedings and delete the penalties in all the appeals. In view of the above, there is no need to decide the remaining issues involved in the appeals. All the appeals of the Assessee are allowed."

Thus, in party with the aforesaid order and since the coordinate bench has decided the matter in favour of the assessee in the identical facts and circumstances, we direct the Assessing Officer to delete the penalty against the assessee. In the result, the appeal filed by the assessee is allowed.

ITA Nos. 5099 to 5104/Del/2017: (A.Yrs. 2007-8 to 2012-13):

9. As already noted, similar grounds have been raised by the assessee in all these connected matters, as were raised in ITA No. 5098/Del/2017, which has been decided in favour of the assessee vide paragraph No. 8 of this order. For detailed discussion, please refer above mentioned paragraph No. 8 of this order. Accordingly, we hold that the finding given in above paragraph with respect to ITA No. 5098/Del/2017 will *mutatis mutandis* apply here in these cases also.

10. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on this 2nd September, 2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 2nd Sept., 2021
'aks'

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER