

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.99 to 103/Jab/2023  
(ASSESSMENT YEAR- 2010-11 to 2014-15)**

Manessh Sharma, 360, Madan Mahal Chowk, Jabalpur.	vs	JCIT (TDS), Bhopal
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. BKNPS1117G</b>		

<b>Assessee By</b>	Shri Dhiraj Ghai, CA
<b>Revenue By</b>	Shri Rakesh Kumar Gupta, Sr.DR
<b>Date of hearing</b>	21/09/2023
<b>Date of Pronouncement</b>	22/09/2023

**ORDER**

**PER OM PRAKASH KANT, A.M.:**

All these appeals by the assessee are directed against the orders dated 06.06.2023 of even number passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short "Ld.CIT(A)"] for the assessment years 2010-11 to 2014-15, in relation to penalty levied u/s 271C of the Income Tax Act, 1961 (in short "the Act"). The issue involved in all the appeals is common, therefore, all the appeals were heard together and disposed off by way of this consolidated order for convenience.

2. Grounds are identical in all the appeals and for the sake of brevity, grounds in ITA No.99/Jab/2023 for the Assessment Year 2010-11 are reproduced as under:-

1. *“The order passed by Ld. CIT(A)- NFAC under section 250 of the I. T. Act 1961 is bad in law and in facts and liable to be quashed.*
2. *The Ld. CIT(A)-NFAC has erred on facts and in law in conforming levy of penalty of Rs. 4,04,312/- under section 271(c) of the I. T. Act i.e the Ld. CTT(A) has erred both in law and in facts in upholding the impugned penalty order passed by Ld. AO is arbitrarily, unjustly and without basis in levying penalty of Rs. 4,04,312/- u/s 271 C of the IT Act.*
3. *The CIT(A) has erred in law and on facts in confirming the penalty of Rs. 4,04,312/- levied u/s 271 C of the Act as same was done despite the fact that the quantum additions for non deduction of TDS have already been deleted by the CIT(A) followed by dismissal of revenue appeal by Hon'ble ITAT which clearly proves that the assessee. had not defaulted in any of TDS deduction. Accordingly Penalty u/s 271 C was, not correctly levied and may kindly be quashed/deleted.*
4. *The appellant prays that the order of CIT(A) on the above grounds be set aside on natural grounds too as CIT(A) fixed the appeal hearing dates in Corona Pandemic period and hence sufficient opportunity was not given to assessee to reply and present his case and accordingly in*

*lieu of supreme Court order in the case of the SONA BUILDERS VS CIT the penalty order may kindly be quashed.*

5. *The Ld. CIT(A) has erred both on facts and in law in upholding the impugned imposition of penalty of Rs. 4,04,312/- u/s 271C of IT Act on ground of concealed/furnished inaccurate particulars of relevant income in terms of explanation attached to it specifying the precise default and hence imposed penalty was vague, non-communicative and thus non speaking defeating the purpose of notice in relevance and therefore, the penalty proceedings qua relevant addition is not sustainable in law. as there was no valid initiation of penalty proceedings for this addition.*
6. *The Ld. CIT(A) has erred on the facts and circumstances of the case in confirming the imposition of penalty of Rs. 4,04,312/- u/s 271C of IT Act ignoring the fact that the impugned penalty order under appeal is not tenable under law as the additions in the quantum proceedings did not establish the default attributed to the appellant for which penalty is livable u/s 271C on the ground that the additions are based on the issues which already depleted by first and second appellate authority.*
7. *The appellant craves leave to add or amend any ground of the appeal.”*

3. Briefly stated facts of the case are that in the verification conducted by the TDS Wing of the Income Tax department, certain

irregularities of non-deduction of tax at source on various payment were observed and accordingly, the AO vide a common order dated 15.12.2015 raised liability u/s 201(1)/201(1A) of the Income-tax Act , 1961( in short ‘the Act’ ) by observing as under:-

*“Shri Manish Sharma Prop. M/s Life care Diagnostic & Medicine was asked to produce documents like ledger, cash book, details of expenditure for the above said purpose 'a' was given 10 days time. After waiting for a long period on 7/09/2015 a show cause was issued giving last opportunity for hearing and date was fixed on 15/09/2015. On the given date Shri Manish Sharma attended asked for more time as he is about to complete the answers to the question raised vide letter dated 07/09/2015. Once again next date of hearing was given on 21/09/2015. Since months have passed no response to the query raised the order u/s 201(1)/201(1A) is to be passed as on going through the audit report filed, following payment debited in the P & L accounts attract deduction of tax at source. The deductor is therefore treated to be in assessee in default u/s 201(1) of Income tax Act 1961. The deductor is liable to pay TDS as under:-*

Heads of account	Sect	2009-10	2010-11	2011-12	2012-13	2013-14
Legal Charges	194J			72000	72000	96000
Audit & Accounting	194J					72000
Interest on USL	194A	63000	71400	500400	480542	590512
Advertisement& promotion	194C	35800	89500	110800	156412	256858
Reporting to Doctors	194J	531626	653014	643117	768541	986854
Referral expenses	194J		555122	407059	428179	586585
Hospital Revenue/ Rent	194I	1391136	1433912	1714118	1754741	1379188

TDS with interest payable		695417	896944	1020459	995633	984064
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*As the assessee has not submitted any PAN of the deductee each default was calculated at the rate of 20%. Thus, the deduct is liable to pay TDS year wise is as under:-*

Year wise demand	u/s 201(1)	201(1A)	Total
Total demand raised for F.Y.2009-10	404312	291105	695417
Total demand raised for F.Y.2010-11	560590	336354	896944
Total demand raised for F.Y.2011-12	689499	330960	1020459
Total demand raised for F.Y.2012-13	732083	263550	995633
Total demand raised for F.Y.2013-14	793600	190464	984064
Total Demand			4592517

*Short Deduction and Interest payable u/s 201(1)/201(1A) of the I.T. Act, 1961, works out as above to Rs 45,92,517/- (Forty five Lakh Ninety two thousand five hundred and seventeen only) for which the deductor is treated as assessee in default and required to pay the same as per demand notice issued along with this order. Issue demand notice and challan accordingly. Penalty proceedings u/s 271C & Section 272BB(1) provides for penalty for failure to obtain TAN of the I.T. Act, 1961 are being separately initiated in this case and for this purpose, the case is being referred to the Addl. Commissioner of Income-tax (TDS), Bhopal for initiation of penalty.”*

4. The AO also initiated penalty u/s 271C of the Act. However, on appeal against the order passed u/s 201(1)/201(1A) of the Act dated 15.12.2015, Ld.CIT(A) deleted the said liability by observing as under:-

**6.1.3. “ Decision:-**“*I have carefully considered the submission put forth & the documents furnished on behalf of the appellant,*

*perused the facts of the case and these grounds relating to the legality of the order passed is bad in law are decided as under-*

*(i) The assessee has challenged the validity of the order passed under section 201(1)/201(1A) on 15.12.2015 for the reason that the assessee is not liable to deduct TDS in the financial year 2009-10 and also for the reason that ITO(TDS), Jabalpur-II has not worked out quarter wise TDS liability.*

*(ii) Smt Dr. Sunanda Dawar Sharma, the wife of the assessee, was not keeping good health and was not in a position to run M/s Shubham Hospital and Research Center. For this reason the hospital was running in loss and was not able to repay the bank loan of Bank of Maharashtra and Bank of India and was also not able to meet out its day to day liability. For this reason, the assessee has taken over the hospital on revenue sharing basis from Dr. Sunanda Dawar Sharma in the previous year relevant to assessment year 2010-11. For the first time the assessee's turnover exceeded the limit prescribed under section 44AB in the assessment year 2010-11 and the accounts of the assessee were audited first time in the assessment year 2010-11.*

*The DCIT(TDS) has worked out the liability of the assessee under section 194A, 194C, 194J and 194I of the Act. All these sections provide that an individual or HUF is required to deduct TDS if the turnover of the individual or HUF in the financial year immediately preceding the financial year in which the payment is made exceeds the limit prescribed under section 44AB. Since the assessment year 2010-11 is the first year of audit hence in view of the provision of these sections the*

*assessee is not liable to deduct TDS in the assessment year 2010-11. Accordingly, the DCIT(TDS) was not justified in holding that the assessee was liable to deduct TDS in the assessment year 2010-11.*

*In result, this submission of the assessee is accepted and accordingly the order passed under section 201(1)/ 201(1A) dated 15.12.2015 is held to be bad in law hence the same is cancelled.*

*(iii) In the 2nd submission the assessee has submitted that as the DCIT(TDS) has not worked out liability quarter wise but contrary to provision of law has worked out liability for full financial year hence the order under section 201(1)/201(1A) is bad in law.*

*This issue has already been decided by the IdCIT(A) in the case of ACC Ltd. In the case of ACC Ltd (J/CIT/A/II/JBP/DCIT/TDS/BP/124 & 125 / 13-14) the Id CIT(A) in his order dated 10.12.2015, has held as follows while deciding the appeal for the assessment year.*

## **II.DECISION:**

*1. As has been referred above, it is clear that one quarter constitutes the relevant time period for filing of return. Accordingly, any artificial clubbing of quarters cannot be condoned in law. Apart from violating the time frame, a consolidated demand without specifying to which quarter it pertains makes the charge vague. In this respect, the following judgment is relevant:*

*In the case of CIT Bangalore Vs. Infosys Technologies Limited (2008) 297 ITR 167/214 CTR293/166 Taxman 204 the Hon'ble Supreme Court in para 6 of the said judgment cited the following:-*

*6. In the case of Govind Saran Ganga Saran Vs. CST[1985] 155 ITR 144 this Court held that there are four components of tax.*

*The first component is the character of the imposition, the second is the person on whom the levy is imposed, the third is the rate at which tax is imposed and the fourth is the value to which the rate is applied for computing tax liability. It was further held that if there is ambiguity in any of the four concept then levy would fail.*

*In view of above, the levy of tax is bound to fall if the charge is vague. Since specific quarter has not been indicated, accordingly the charge for 4th Qtr. Which is unspecified fails on this count.*

*2. Further, the manner of performing a statutory act, once defined cannot be twisted to suit one's own perception. The following legal enunciations clarify this:*

*I.RAMCHANDRA KESHAV ADKE & ORSVS.GOVIND JOTI CHAVARE AND ORS.AIR 1975 SC 915.1975 SCR (3)839. 1975 scc(1) 559 DATE OF JUDGMENT04/03/1975 EXTRACT:*

*A century ago, in Taylor v. Taylor(1), Jassel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily*

*forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor(2) and later by this Court in several cases This rule squarely applies" where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other."*

*II.CIT vs. SMT. PHOOLMATI DEVI(1983) 144 ITR 09S4 (ALLD)*

*EXTRACT*

*6. When a statute requires that something shall be done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the omission of not doing that in the manner prescribed in some cases has been held fatal to its validity. In the present case, ..*

*9. Relying upon s. 292B of the IT Act inserted by the Taxation Laws (Amendment) Act, 1975, the learned counsel submitted that the defect of non-service of notice was fairly a technical objection and as such the same should not come in the way of the validity of the acquisition. We are unable to agree. Section. 292B may apply to a case where service has already been effected, but there is a technical mistake in the notice. But where, as here, no notice has been served, this section will not come to the rescue of the Department. Moreover, this section came into force w.e.f. 1st Oct., 1975, whereas the proceedings in the instant case had been initiated earlier. For this reason also this section will not apply.*

*10. In result, the appeal fails and is dismissed with costs.*

III. *ORISSA RURALHOUSINGDEVELOPMENTCORPORATION LTD. vs.ACIT(2012)343 ITR0316(ORISSA)*

*EXTRACTS:*

*17. Law is well-settled that when the statute requires to do certain thing in certain way, the thing must be done in that way or not at all. Other methods or modes of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressiouniusest exclusion alteris", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following of other course is not permissible. [See Taylor vs. Taylor (1876) 1 Ch.D.426; Nazir Ahmed vs. King Emperor AIR 1936 PC 253; Ram PhalKundus.Kamal Sharma; and Indian Bank's Association vs. Devkala Consultancy Service AIR 2004 SC2615].*

IV. *CIT vs. SPL'S SIDDHARTHA LTD. (2012) 345 ITR 0223(DELHI)*

*EXTRACTS:*

*7 It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some Commissioner offer manner. It was so held in the following decisions:*

*(1)CIT Vs.Naveen Khanna(dated 18.11.2009 in ITANo.21/2009 (DHC).*

*ii) State of Bihar Vs. J.A.C. Saldanna&Drs. AIR (1980) SC326.*

*(iii) State of GujratusShantilalMangaldas, AIR [1969] SCN 634.*

8. Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined.

E. It is accordingly held that the order of the AO suffers from two fatal legal infirmities:

(i) The charge for the financial year is vague and is in violation of the ruling of the Hon'ble Supreme Court (*supra*). It is also fatally defiant of manner of performance laid down in the statute as described above.

(ii) The order for first three quarters also stands barred by time since it could not have been passed subsequent to 31.03.2013."

The *ld.* CIT(A) while deciding the appeal of ACC Ltd for the assessment year 2011-12

(J) CIT/A/II/JBP/DCIT/TDS/JBP/125/13-14) has held asunder :-

"In this year, demand of Rs 4,03,160/- has been raised by the AO. The key issue which is present in this year emanates from GOA 1 which challenges the order as suffering from vagueness which is fatal in nature. Detailed submissions regarding vagueness have already been given in A.Y. 2011-12 which has been decided as above. The line of reasoning and the submissions of the assessee in that year are squarely applicable in this year as well. The same are already reproduced above and need not be repeated.

It is accordingly held that the order suffers from vagueness and the AO was not legally empowered to pass a consolidated order

*for all the quarters whereas each quarter constitutes a separate assessment unit. This is neither a procedural error nor rectifiable under any other provision of the Act. It goes to the core of the matter and makes assumption of jurisdiction fatally faulty in nature.*

*Accordingly, the order is hereby annulled and the appeal of the assessee is allowed. No decision is made on merits as the legal plea stands allowed."*

*The factual position of the case of the assessee is similar to that of ACC Ltd. Hence, in view of the decision of Id CIT(A) the case of ACC Ltd. the order passed by DCIT(TDS) under section 201(1)/201(1A) on 15.12.2015 in the case of assessee is bad in law and accordingly is annulled.*

*6.2 Ground Nos.2 to 5& 7: Since the order passed under section 201(1)/201(1A) has been cancelled hence the other grounds of the appeal on merit are not decided."*

5. Before us, Ld. Counsel for the assessee submitted that since the order u/s 201(1)/201(1A) of the Act has already been cancelled and therefore, the penalty levied u/s 271C of the Act also cannot survive.

6. We have heard Ld. Authorized Representatives of the parties on issue in dispute and perused the relevant material available on record. We find that Ld.CIT(A) has upheld the penalty levied u/s 271C of the Act relying on the order of non-deduction of tax and for reason of the liability u/s 201(1)/201(1A) of the Act raised.

However, we find that the said order of the AO has already been cancelled by Ld.CIT(A) vide separate orders dated 11.12.2017 for all the assessment years involved, relevant part of which has already been reproduced above and therefore, the penalty upheld by Ld.CIT(A) cannot survive. Accordingly, the said penalty is cancelled.

7. The facts and circumstances being identical for other AYs, the penalty levied for other AYs u/s 271C of the Act are also cancelled. The ground raised in appeals filed by the assessee are accordingly, allowed.

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

Order pronounced in the open Court on 22/09/2023.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Asstt. Registrar  
Jabalpur Bench