

INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)

ITA No. 20/AGR/2023
(Assessment Year: 2016-17)

BLM Hospitals Private Limited 1/103, Talaiya Lane Fategarh Farukkhabad-209601	Vs.	DCIT, Circle-4(2)(1), Farrukhabad
(Appellant)		(Respondent)
PAN:AACCB2686A		

Assessee by :	Shri Swaran Singh, CA
Revenue by:	Shri Shailendra Shrivastava, Sr. DR
Date of Hearing	05/02/2025
Date of pronouncement	05/02/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.20/AGR/2023 for AY 2016-17, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 26.08.2022 against the order of assessment passed u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 15.04.2019 by the Assessing Officer, DCIT, Circle-4 (2)(1), Farrukhabad (hereinafter referred to as 'Id. AO').
2. Though the assessee had raised several grounds of appeal, the only effective issue to be decided in this appeal is as to whether the Learned NFAC was justified in confirming the levy of penalty under section 271(1) (c) of the Act in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the materials available on record. The assessee is a private limited company engaged in the

business of medical profession under the name and style of M/s BLM Hospitals Private Limited and derives its income thereon. The return of income for the assessment year 2016-17 was electronically filed by the assessee on 26-09-2016 declaring taxable income of Rs 38,15,930/-. The assessment was completed under section 143(3) of the Act on 25-09-2018 determining total income at Rs 38,15,930/-. But in the computation sheet of tax liability, the income was computed at Rs 39,57,705/- which is evident from pages 44-47 of the paper book. Accordingly, the assessee company filed a rectification application under section 154 of the Act before the Learned AO on 17-10-2018 on the ground that income taken in the computation is different than the income assessed by the Learned AO. During the course of rectification proceedings, it was found by the Learned AO that the assessee company had wrongly claimed MAT credit under section 115JAA of the Act amounting to Rs 97,531 and rejected the rectification application of the assessee. The assessee company filed a reply dated 25-2-2019 stating that the MAT credit under section 115JAA of the Act amounting to Rs 97,531/- was inadvertently claimed by the assessee company due to inadvertent error and due to change of software used by the counsel of the assessee. The assessee then filed its modified return of income for assessment year 2016-17 and paid the due taxes there on. Since this revised return of income was filed beyond the prescribed time provided in the statute, the Learned AO did not take cognizance of the same and treated the same as non-est. Subsequently, penalty proceedings under section 271(1)(c) of the Act stood initiated on the assessee vide show cause notice under section 274 read with section 271(1)(c) of the Act dated 13-3-2019. Reply was filed by the assessee filing objections to the show cause penalty notice stating that from the reading of rectification order, it is clear that neither the satisfaction has been recorded by the Learned AO nor any direction for

initiating proceedings under Section 271(1)(c) of the Act has been given by the Learned AO in the said rectification order and hence the provisions of Section 271(1)(c) cannot be made applicable as it would be without jurisdiction and liable to be dropped. The assessee placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Ram Commercial Enterprises Limited reported in 122 Taxman 620 (Del) and CIT vs Rampur Engineering Company Limited reported in 176 Taxman 211 (Del) in support of this proposition. It was also submitted that the above two judgments were duly approved by Hon'ble Supreme Court in the case of Dilip N Shroff vs JCIT reported in 161 Taxman 218 (SC). Further, it was submitted that proceedings under Section 271(1)(c) of the Act could be initiated when the particulars of income is concealed or inaccurate particulars of income are furnished in the return of income.

4. We find that in the instant case, the assessee has inadvertently claimed the MAT credit alone which has got absolutely no bearing on the determination of income per se. Hence, the provisions of Section 271(1)(c) of the Act per se could not be applied at all. In support of this proposition, we find that the Learned AR rightly placed reliance on the decision of Co-ordinate Bench of Chandigarh Tribunal in the case of Arge Drugs Private Limited vs DCIT reported in 61 taxmann.com 254 (Chand Trib.). The relevant operative portion of the said tribunal order is reproduced below:-

"9. *We have heard the rival submissions and have gone through the paper book placed before us. We find that the brief issue before us is the levy of penalty under section 271(1)(c) on two counts 1. excess claim of brought forward MAT credit and 2. disallowance of expenses incurred on earning exempt income.*

9.1. *On the issue of brought forward MAT Credit, the undisputed facts before us are that the assessee filed its return of income on 26/09/2010 and claimed brought forward MAT credit of Rs. 90,25,449/- the details of which, disclosed in the computation of income for AY 2010-11 and produced at paper book page no. 1/3 are as follows :*

A.Y	Brought forward MAT credit
06-07	17,85,626/-
07-08	25,95,946/-
08-09	22,82,722/-
09-10	23,61,155/-
	<u>90,25,449/-</u>

Thereafter assessment of AY 2008-09 was framed on 02/12/2010 and AY 2009-10 on 19/09/2011 reducing brought forward MAT credit by Rs. 6,31,893/- and Rs. 4,25,299/- respectively.

9.2. *In the light of the above facts the imposition of penalty under section 271(1)(c) on excess brought forward MAT credit has to be analyzed.*

9.3. *Penalty under section 271(1)(c) is levied for concealing or furnishing inaccurate particulars of income. In the case before us the issue relates to levy of penalty on account of excess brought forward MAT credit. Whether the term "income" used under section 271(1)(c) includes MAT credit, has to be adjudicated upon. Income is understood to mean "the money that a person earns from work, business etc". The definition of income under section 2(24) of the Income tax Act, 1961, also indicates likewise. MAT on the other hand is tax paid on book profits. MAT credit is income tax paid on book profits in earlier years which is allowed to be setoff against taxes paid on business income in succeeding years. It is in the nature of taxes paid in advance. Income contemplated under section 271(1)(c), is the income on which taxes are to be computed and paid. This is evident from section 271(1)(c) itself which quantifies the amount of penalty, to the tax sought to be evaded by concealing / furnishing inaccurate particulars of income. Taxes paid or payable are thus not income for the purposes of Section 271(1)(c). Particulars of MAT credit furnished in the return of income cannot therefore be said to be particulars of "Income" for the purpose of levying penalty u/s 271(1)(c).*

.....

Therefore it is held that penalty imposed under section 271(1)(c) amounting to Rs.11,32,386/- qua revised MAT Credit be hereby deleted ."

5. Respectfully following the same, we hold that the levy of penalty under section 271(1)(c) of the Act for the inadvertent claim of MAT credit is hereby deleted. Accordingly, the grounds raised by the assessee are hereby allowed.

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

Order pronounced in the open court on 05/02/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 05/02/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi