

OD7 **wt 8-10**

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

RVWO/35/2016
IA NO: GA/1/2016 (Old No:GA/2496/2016)
KPC MEDICAL COLLEGE AND HOSPITAL
VS
THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), KOLKATA-1

ITA/21/2015
KALI PADIP CHAUDHARI FOUNDATION
VS
THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), KOLKATA-1

RVWO/36/2016
IA NO: GA/1/2016 (Old No:GA/2497/2016)
KPC MEDICAL COLLEGE AND HOSPITAL
VS
THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), KOLKATA-1

RVWO/37/2016
IA NO: GA/1/2016 (Old No:GA/2498/2016)
KPC MEDICAL COLLEGE & HOSPITAL
VS
THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), KOLKATA-1

WITH

ITAT 105/2015
ITAT 107/2015
ITAT 108/2015

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

Date : 19th March, 2025

Appearance :

Mr. Soumitra Choudhury, Adv.

Mr. Avra Majumder, Adv.

Mr. Pranabesh Sarkar, Adv.

...for appellant

Mr. Smarajit Roychowdhury, Adv.

Mr. Soumen Bhattacharjee, Adv.

Ms. Shradhya Ghosh, Adv.

...for respondent

The Court: The stay applications have been filed by the assessee in RVWO 35/2016, RVWO 36/2016 and RVWO 37/2016 in which there is a prayer for condonation of delay of 120 days in filing the review applications.

We have heard learned Advocates for the parties and perused the voluminous materials placed before us. Admittedly, the delay of 120 days is not inordinate. Therefore, we will be very justified in exercising discretion in the matter to condone the delay. Two other factors which persuaded us to do so are that three appeals, namely, ITAT 105/2015, ITAT 107/2015 and ITAT 108/2015, appearing in the supplementary list today, were dismissed by the Division Bench of this Court by order dated 7th August, 2015. However, at that stage, one other appeal filed by the assessee was already admitted, namely ITA 21 of 2015. This appears to have not been brought to the notice of the Hon'ble Division Bench. The assessee carried the matter in appeal to the Hon'ble Supreme Court in SLP(C) No. 3229 and No.3221 of 2016 and the Hon'ble Supreme Court by order dated 14th March, 2016 took note of the submissions made on behalf of the assessee that against the very same impugned order passed by the Income Tax Appellate Tribunal, High Court had issued notice in the connected matter. Therefore, the assessee was given liberty to point out the same before this Court by filing an application for review. In terms of the liberty granted, review applications have been filed.

The second issue which convinced us to exercise discretion is the fact that another appeal filed by the assessee arising of the same order passed by the Tribunal is pending before this Court in ITA 21/2015.

Thus, for the above reasons, the delay in filing the review applications is condoned.

Now, we move on to whether to consider the review applications.

In the review applications we are required to consider as to whether the review applicant was able to point out an error apparent on the face of the judgment and order dated 7th August, 2015. Admittedly, the connected appeal arising out of the same impugned order passed by the Tribunal was pending before this Court and the appeal was admitted, the appeal number being ITAT 106/2015, which, after admission, has been assigned a number, ITA 21/2015. This aspect having not been taken note of and the Court having been convinced that a substantial question of law would arise for consideration and entertained the connected appeal. The three other appeals could not have been dismissed on the ground that no substantial question of law arises for consideration. This convinced us to hold that there is an error apparent in the judgment and order dated August 7, 2015, as corrected by the order dated September 30, 2015 and accordingly, the review applications are allowed and the appeals are restored to the file of this Court to be heard and decided along with the ITA 21/2015.

The compilation of judgments submitted by the learned Advocate for the assessee is taken on record. The written submissions submitted on behalf of

the assessee is also taken on record, copies of which have been served to the learned Advocate for the respondent/department.

These appeals have been filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) challenging the common order passed by the Income Tax Appellate Tribunal, “A” Bench, Kolkata, dated 24th June, 2015 in ITA/1832 to 1834/Kol/2014 and ITA 1835/Kol/2014 for the assessment years 2007-08 to 2009-10 and 2011-12.

Out of the four appeals, the appeal being ITAT 106/2015 was admitted on 26th August, 2015 on the following substantial questions of law :

“(i) Whether on a correct interpretation of the provisions of section 271(1)(c) of the Income Tax Act, 1961 read with the Explanation 1 appearing thereunder, the Tribunal misdirected itself in law and adopted a wholly erroneous approach in upholding the levy of penalty of Rs.43,56,900, in the instant case, on the alleged ground that the Appellant Foundation had concealed its income and/or furnished inaccurate particulars of its income in respect of the assessment year 2011-12?

(ii) Whether the Order dated 24th June, 2015 passed by the Tribunal upholding the levy of penalty of Rs.43,56,900, in the instant case of the Appellant Foundation in respect of the assessment year 2011-12 is wholly erroneous in law, against the facts and evidences on record, wholly baseless, unreasonable and/or otherwise perverse?”

Upon admission the Department has assigned the number ITA 21/2015. The other three appeals, namely, ITAT 105, 107 and 108/2015 were heard by the Division Bench and by judgment dated August 7, 2015 the appeals were dismissed on the ground that no substantial question of law arises for

consideration. This order was put to challenge before the Hon'ble Supreme Court in SLP(C) No. 3229-3231 of 2016 and it was brought to the notice of the Hon'ble Supreme Court that a connected appeal, namely, ITAT 106/2015 has already been admitted which arises out of the common order passed by the Tribunal and therefore the Division Bench could not have dismissed the three other appeals arising for the other assessment years on the ground that no substantial question of law arises. The Hon'ble Supreme Court by order dated 14th March, 2016 has given liberty to the assessee to point out this aspect before this Court and file a review application. Accordingly, the review applications were filed by the assessee before this Court being RVWO 35/2016, 36/2016 and 37/2016. There was a delay of 120 days in filing the review applications. By order dated 19th March, 2025, after considering the facts and circumstances, the delay was condoned. Thereafter, the review applications were taken up for consideration and it was found that since a connected appeal arising out of the same order passed by the learned Tribunal was already admitted, the three other appeals could not have been dismissed on the ground that no substantial question of law arises and this, in the opinion of the Court, was an error apparent on the face of the record. Accordingly, the review applications were allowed by order dated 19th March, 2025 and the appeals were restored to be heard along with the ITA 21/2015.

In this batch of four cases ITA 21/2015 is the lead case. The question which arises for consideration is with regard to the justifiability of imposition of penalty by invoking the power under Section 271(1)(c) of the Income Tax Act,

1961. This issue is no longer res integra and has been decided by several decisions of the Hon'ble Supreme Court and the High Courts. Basically, the question which arises is whether the notices which have been issued to the assessee were valid in the eye of law. In this regard, we may refer to the recent decisions of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax (LTU) Vs. State Bank of India* [2024] 169 taxmann.com 305 (SC). In the said decision, the validity of the notice issued under Section 271(1)(c) was the issue which fell for consideration. The appeal filed by the revenue was dismissed holding that where the assessing officer had not specified the relevant portion of clause (c) in the notices for initiating penalty proceedings under Section 271(1)(c), the notices issued under Section 274 read with 271 were invalid and, therefore, the orders passed by the authorities levying penalty under Section 271(1)(c) were cancelled. In the said decision, the Hon'ble Supreme Court noted the decision in the case of *CIT Vs. Manjunatha Cotton & Ginning Factory* [2013] 35 taxmann.com 250/218. Apart from the decision in the case of *CIT Vs. SSA's Emerald Meadows* [2016] 73 taxmann.com 241 (Karnataka) which was upheld by the Hon'ble Supreme Court in *CIT Vs. SSA's Emerald Meadows* [2016] 73 taxmann.com 248/242. Similar view was taken by the Hon'ble Supreme Court in *Principal Commissioner of Income Tax Vs. Unitech Reliable Projects (P.) Ltd.* [2024] 166 taxmann.com 135 (SC) and *Principal Commissioner of Income Tax (Central) Vs. Golden Peace Hotels and Resorts (P.) Ltd.* [2021] 124 taxmann.com 249 (SC). We have also taken note of the decision of the Division Bench of this Court in *Principal CIT-1, Kolkata Vs. Robbs Traders & Finance Pvt.*

Ltd. [ITAT/226/2024 & IA No.GA/2/2024] dated 20th December, 2024 and also the decision of the High Court of Judicature at Madras in the case of *Commissioner of Income Tax, Chennai - IV Vs. M/s. Gem Granites (Karnataka), Tax Case (Appeal) No. 504 of 2009* dated 12th November, 2013 and the relevant paragraphs of the decision are quoted hereinbelow :

“10. The Hon'ble Supreme Court in the case of Union of India vs. Rajasthan Spinning and Weaving Mills reported in (2009) 13 SCC 448, considered the earlier decision of the Hon'ble Supreme Court in the case of Union of India and Ors vs. Dharmendra Textiles Processors & Ors., reported in [2008] 306 ITR 277 (SC) and held that it goes without saying that for applicability of Section 271(1)(c) of the Act, condition stated therein must exist. The above said decision came up for consideration in the case of Commissioner of Income Tax vs. Reliance Petroproducts Pvt., Ltd., reported in [2010] 322 ITR 158 (SC). On reading of Section 27(1)(c), the Hon'ble Supreme Court pointed out that in order to bring the case under Section 271(1)(c), there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision could not be invoked. Thus, the Hon'ble Supreme Court pointed out that a mere making of a claim, which is not sustainable in law, by itself, would not amount to furnishing of inaccurate particulars regarding the income of the assessee. The reading of the decision of the Hon'ble Supreme Court referred to above, thus points out that for sustaining penalty, the bonafide explanation of the assessee must be looked at, so that the contumacious conduct of the assessee for the purpose of sustaining the penalty would be taken as condition that is the main

requirement under Section 271(1)(c) of the Act. Referring to the decision in the case of *Dharmendra Textile Processors*, (supra), the Hon'ble Supreme Court pointed out that in the background of Section 271(1)(c) of the Act, there is no necessity of mens rea being shown by the Revenue, however referring to the Explanation to Section 271(1)(c) penalty being a multiple liability, the bonafide of the conduct of the assessee necessarily assumes significant, even though willfulness of the assessee may not be a criteria, the conduct is to be considered. Thus, a mere fact that the addition in this case has been sustained by this Court by itself would not lead to the automatic application to Section 271(1), the Tribunal went into the explanation offered by the assessee as regards the charging of a higher amount in the case of *J.B.Exports*. Although, the Tribunal rejected the explanation for the purpose of assessment of goods, it considered it as a good ground for cancellation of penalty, when the explanation on the differential amount was given by the assessee that the entries were made in the account and the Accountant had not made the correct entry.

11. In a recent decision of the Hon'ble Supreme Court in Civil Appeal No.9772 of 2013, dated 30.10.2013 (*Mak Data P. Ltd., vs. Commissioner of Income Tax-II*), the Hon'ble Supreme Court while considering the Explanation to Section 271(1), held that the question would be whether the assessee had offered an explanation for concealment of particulars of income or furnishing inaccurate particulars of income and the Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted their income and not otherwise.”

The learned advocate appearing for the appellant/assessee submitted that though the three substantial questions of law which were admitted for consideration did not concern the validity of the proceedings under Section 153C of the Act, these grounds were canvassed by the assessee in the review application. In this regard, we take note of the decision of the Hon'ble Supreme Court in *CIT Vs. Sinhgad Technical Education Society* [2017] 84 taxmann.com 290, wherein the Hon'ble Supreme Court held that correlation should be established with the seized documents qua the assessee document-wise with the assessment years in question and upon such exercise not being done, the notice issued under Section 153C of the Act was quashed. The decision of the Hon'ble Supreme Court was followed in *Principal Commissioner of Income Tax, Central – 2, Chennai Vs. S.R. Trust* [2021] 123 taxmann.com 311. Another ground canvassed by the learned advocate appearing for the assessee is with regard to the notice issued under Section 271AAA to the assessee foundation dated 31st March, 2013.

We have perused the notice and we find that none of the relevant columns have been indicated nor have the irrelevant columns been struck off. Identical issue came up for consideration wherein one of the questions which was considered was with regard to the validity of the notice issued under Section 274 read with 271 wherein the Court also took into consideration the effect of Section 271AAB read with 162 and answered the questions in favour of the assessee and against the revenue in the following terms :

“In CIT v. SSA’S Emerald Meadows [2016] 73 taxmann.com 241 (Kar.) the High Court of Karnataka following the decision in CIT v. Manjunatha Cotton & Ginning Factory [2013] 35 taxmann.com 250/218 Taxman 423/359 ITR 565 (Kar.) held that the imposition of penalty under section 271(1)(c) of the Act is bad in law and invalid for the reasons where the show cause notice under section 274 of the Act did not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The said decision of the High Court of Karnataka was affirmed by the Hon’ble Supreme Court in the decision reported in CIT v. SSA’s Emerald Meadows [2016] 73 taxmann.com 248/242 Taxman 180. On the same lines it is the decision of this court in Pr. CIT v. Brijendra Kumar Poddar in [ITAT No. 215 of 2018, dated 23-11-2021]. As pointed out earlier, the show cause notice issued under Section 274 read with Section 271 of the Act did not furnish any particulars and all the relevant columns have been left blank. Thus, by applying the legal position in the aforementioned decision, this court has no hesitation to hold that the show cause notice was bad in law consequently the initiation of penalty proceedings is vitiated.”

Thus, for the above reasons, the appeals filed by the assessee are allowed and the substantial questions of law are answered in favour of the assessee.

Leave is granted to the assessee to file vakalatnama in the department.

It is submitted by the learned senior standing counsel for the Department that the panel of the learned standing counsel has expired on 9th March, 2025 and further order is awaited. By an order dated 5th March, 2025, we directed Mr. Smarajit Roy Chowdhury and Mr. Soumen Bhattacharjee, learned standing counsel to appear on behalf of the Department. Considering

the fact that the cases are of the year 2015 and there was a direction issued by the Hon'ble Supreme Court directing the assessee to file the review, which has been filed, therefore the cases had to be given precedence and, accordingly, the matters were taken up for disposal. Therefore, the appearance of the said learned standing counsel should be regularized and their fee and other bills submitted by them should be processed and paid.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)