

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No. 6124/DEL/2015
(ASSESSMENT YEAR-2010-11)

Parul Chaudhary A-9, Radha Garden Mawana Raod, Meerut AHDPC9869P (APPELLANT)	Vs	ITO Ward 2(1) Meerut (RESPONDENT)
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Appellant by	Sh. Rohit Aggarwal, CA
Respondent by	Sh. Rajesh Kumar, Sr. DR

Date of Hearing	29.03.2017
Date of Pronouncement	30.03.2017

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 18/09/2015 passed by CIT(A)- Meerut for Assessment Year 2010-22.

2. The grounds of appeal are as follows:

- “1. That the Ld.CIT(A) has erred in law as well as on the facts of the case by confirming the penalty of Rs.2,80,287/- as imposed by the ld. A.O allegedly for furnishing of inaccurate particulars of income so as to conceal the particulars of income and the submissions of the appellant have not been considered in right perspective thereof.
2. That the observation of the Id.CIT(A) that the appellant has deliberately concealed the particulars of income so as to mislead the A.O. and evade tax is unjust and unlawful and in any case the tax sought to be evaded was only Rs. 1,66,918/- (i.e. total tax of Rs.2,80,287.00 (Less) -TDS not claimed for Rs.1,13,369.00) and therefore the penalty @ 100% of tax

sought to be evaded ought to have been restricted at Rs.1,66,918/- only.

- 3. That without prejudice to above grounds and on the facts of the case, the penalty under reference ought to have been reduced to Rs.1,06,430/- after allowing the benefit of unclaimed TDS and the estimated addition with reference to the declared receipts, which was not liable to concealment penalty being based purely on estimation.*
- 4. That without prejudice to above, the order under appeal confirming the impugned penalty is totally unlawful and unjust and deserves to be set aside or modified.*

3. The assessee is engaged in the business of advertising under the name & style of M/s -"Shika Advertising Agency. The assessee filed her return of income on 15.10.2010 declaring total income of Rs.6,61,410/-, which included an income of Rs.4,55,360/- from advertising business on declared receipts of Rs.65,10,984/-. The assessee has maintained her books of account on cash system and declared her gross receipts of Rs.65,10,984/- in her return of income. On verification of Form 26AS, the A.O. found the gross receipts of Rs. 1,36,24,460/- as against the declared gross receipts as above and the amount of difference of Rs.71,13,476/- was treated as undisclosed receipts. The assessee explained during assessment proceedings that she had maintained books of account on cash system and the amount of income, which was actually received by the assessee, was accounted for and the expenses incurred by the appellant with reference to the said receipts only were accounted for. All expenses relating to the work, payment of which was not received, were neither paid nor accounted for by her and the assessee also did not claim credit of TDS of Rs.1,13,369/- deducted on such unaccounted receipts of Rs.71,13,476/-. The assessment of the assessee was completed by estimating net profit of 10% on total receipts of Rs.1,36,24,460/-, resulting in a total addition of Rs.9,07,086/- being the amount of Rs.7,11,348/- towards profit from alleged undisclosed receipts and Rs.1,95,738/- towards estimated addition in disclosed income of Rs.4,55,360/- on declared receipt of Rs.65,10,984/-. The assessee did not file any appeal against the addition so made by the Assessing

Officer.

4. During penalty proceedings, it was submitted by the assessee that there was no intention whatsoever on the part of the assessee to conceal the income and to furnish inaccurate particulars thereof and the difference in the receipts was only on account of method of accounting adopted by her. It was also submitted that the assessee has out rightly offered the estimated income for assessment @ 9%-10% of the difference in receipts. It was also claimed, that the credit of TDS of Rs.1,13,369/- on Rs.71,13,476/- was not taken by the assessee and the amount of tax sought to be evaded, if any, has to be reduced by that amount and therefore if the penalty has to be imposed, that be restricted to Rs. 1,66,918/- as against the penalty of Rs.2,80,287/- being 100% of tax on total amount of addition. The A.O. did not accept the submissions of the assessee and imposed penalty of Rs.2,80,287/- under Section 271 (1)(c) of the Act @ 100% of total tax due on the total amount of addition.

5. Aggrieved by the order, the assessee filed an appeal before the CIT(A). Before the CIT(A), the assessee submitted that no penalty should have been imposed and be confirmed with reference to the addition of Rs.1,95,738/-, being the estimated addition with reference to the declared receipts of Rs.65,10,984/- as the same was made purely on the basis of an estimation. The CIT(A) vide order dated 06.05.2015, dismissed assessee's appeal by upholding the penalty of Rs.2,80,287/- as imposed by the Assessing Officer.

6. The assessee is before us against the said order of the CIT(A).

7. The Ld. AR submitted the assessee has maintained its account mainly on cash basis and the amount of income from an advertisement business received by the assessee up to 31/3/2010 was accounted in the books of accounts. The assessee claim amount of staff salary at Rs.60,23,000/- in the profit and loss

account related to declare gross receipts of Rs. 65, 10,984/-. The Ld. AR further submits that the Assessing Officer is wrong in observing that since the assessee has neither shown the receipts nor the expenditure completely the net profit of M/s Anshika Advertising Agency was estimated at 10% of the gross receipts of Rs.1,36,24,416/- which were amounted to Rs.13,62,446/- as the net profit of Rs.4,55,316/- was already shown by the assessee. The Assessing Officer added the difference of Rs.9,07,086/-. The Ld. AR submitted that there is no concealment on part of the assessee. Therefore, the penalty order was not inconsonance in the provisions of Section 274/271 (a)(c) of the Income-tax-Act. The Ld. AR also relied upon the judgment of the Hon'ble Allahabad High Court in case of CIT Vs. Raj Bans Singh 276 ITR 351 as well as the jurisdictional Delhi High Court decision in case of CIT Vs. Aero Traders (P) Ltd. 322 ITR 316.

8. The Ld. DR submitted that there is no clear indication that the accounts was maintained by cash basis or by mercantile basis. The Ld. DR further submitted that the Assessing Officer as well as the CIT(A) has rightly imposes the penalty to the assessee.

6. We have heard both the parities. The assessee has offered the estimated income for assessment @ 9%-10% of the difference in receipts. The assessee claimed that credit of TDS of Rs.1,13,369/- on Rs.71,13,476/- which was not taken by the assessee and the amount of tax sought to be evaded, if any, has to be reduced by that amount. All expenses relating to the work, payment of which was not received, were neither paid nor accounted for by her and the assessee also did not claim credit of TDS of Rs.1,13,369/- deducted on such unaccounted receipts of Rs.71,13,476/-. The assessment of the assessee was completed by estimating net profit of 10% on total receipts of Rs.1,36,24,460/-, resulting in a total addition of Rs.9,07,086/- being the amount of Rs.7,11,348/- towards profit from alleged undisclosed receipts and Rs.1,95,738/- towards estimated addition in disclosed income of Rs.4,55,360/-

on declared receipt of Rs.65,10,984/-. Thus, it is clearly a case of estimated addition for which there was no concealment on part of the assessee. The department cannot on its own decide that there is concealment when all the records were revealed during the assessment proceedings by the assessee. The assessee at no point of time has concealed any income as such. Further, it is settled law that no penalty can be imposed when the addition is made on estimate basis. The CIT(A) failed to look into these aspects.

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

The order is pronounced in the open court on 30th of March, 2017.

Sd/-

(R.S. SYAL)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 30/03/2017

R.Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	30/03/2017	Sr. PS
2.	Draft placed before author		Sr. PS

		30/03/2017	
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	31.03.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	31.03.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		