

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.1025/Del./2013
(ASSESSMENT YEAR : 2006-07)**

**ITA No.843/Del./2015
(ASSESSMENT YEAR : 2006-07)**

Shri Satish Kumar, vs. ITO, Ward 2 (3),
S/o Shri Bal Kishan, Meerut.
2371/5, New Govindpuri,
Kanker Khera,
Meerut.

(PAN : ABHPA6832A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vinod Kumar Goyal, Advocate
REVENUE BY : Smt. Anima Barnwal, Senior DR

Date of Hearing : 01.06.2016
Date of Order : 03.06.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since both the aforesaid appeals are inter-connected, the same are being disposed off with consolidated order to avoid the repetition of discussion.

2. Appellant, Shri Satish Kumar (hereinafter referred to as 'the assessee'), by filing aforesaid appeals sought to set aside the

impugned order dated 06.09.2012 passed by the Commissioner of Income-tax (Appeals), Meerut qua the quantum proceedings and impugned order dated 04.02.2015 passed by the Commissioner of Income-tax (Appeals), Meerut, affirming the penalty order dated 11.03.2013 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), for the assessment year 2006-07 on the grounds inter alia that :-

ITA No.1025/Del/2013

“1. That Ld. A.O. as well as CIT (A) is in error in holding that return filed by the assessee for which the assessee deny and A.O. made assessment and confirm by CIT (A) is arbitrary, unjust and not according to law. Even the assessee signed blank return and his counsel filed his return by showing fake income could not constitute real income. The assessee rely upon following Supreme Court judgment

- (i) State Bank of Travancore 158 ITR 102
- (ii) Godhra Electricity Co. Ltd. 225 ITR 746

2. The assessee on statement on oath clearly state that he has not having agriculture land and any capital assets and his income is only 3,000/- to 4,000/- in a month. A.O. has not justified in making addition of Rs.2,72,000/- & Rs.1,80,000/- u/s 68 of I.T. Act, 1961.

3. That Ld. A.O. ignored the return filed by the assessee in response to notice u/s 142(1) at Rs.80,000/-.

4. That the assessee has right to add/delete or modify any grounds during the appeal proceeding.”

ITA No.843/Del/2015

“1. That Ld. CIT (A), Meerut is in error in stating that the assessee has admitted that he has furnished inaccurate particulars of his income. The assessee neither admitted before nor before CIT (A), Meerut. Hence, the assessee filed application U/s 154 before CIT (A), Meerut, therefore, confirmation of penalty on the basis of incorrect facts is bad in law.

2. That Ld. CIT (A), Meerut is in error in stating that case law quoted by the assessee are not of any help because the facts of each case, which has been cited is unique to itself. CIT (A) even not to bother to distinguish the case law particularly CIT vs. Reliance Petroproducts Pvt. Ltd., 322 ITR 158 (SC).

3. That the assessee has right to add/delete or modify any grounds during the appeal proceeding.”

3. Briefly stated the facts of this case are : on the basis of return of income dated 29.08.2006 filed by the assessee declaring net income of Rs.3,71,842/-, case was subjected to scrutiny and consequently, notices under section 143(2) and 142 (1) of the Act were served upon the assessee and in response thereto, Shri Satish Kumar, assessee put in appearance, filed requisite documents and also discussed the case. A perusal of the return of income shows that the assessee has shown agricultural income from sugarcane, wheat, cattle feed etc. to the tune of Rs.3,15,800/- minus Rs.43,800/- on account of expenses for electricity, diesel, seed, labour etc. (net agricultural income Rs.2,72,000/-). However, during the assessment proceedings, assessee got recorded the statement that he does not have any agricultural land in his name

nor he is aware of any such income shown in the return of income. AO came to the conclusion that assessee is not holding any agricultural land and nor have carried out any agricultural activities during the year under assessment, thus failed to explain the income recorded in the return of income and thereby made an addition u/s 68 of the Act to the tune of Rs.2,72,000/-.

4. From the balance sheet of the assessee as on 31.03.2006, it is noticed by the AO that assessee has introduced capital at Rs.1,80,000/- to run the business activities in the name and style as Ujjawal Tent House and the assessee was called upon to explain the same. Assessee attended the proceedings and got recorded his statement; that he has not invested any such capital of Rs.1,80,000/- in any of the business. Finding the explanation given by the assessee not tenable, AO proceeded to make addition of Rs.1,80,000/- and assessed the total income of the assessee at Rs.5,51,840/-.

5. Assessee carried the matter before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

ITA No.1025/Del/2013

7. Bare perusal of the assessment order dated 11.12.2008 and impugned order passed by CIT (A) dated 06.09.2012 show that the AO has made the assessment without applying his mind and without examining the statement got recorded by the assessee during assessment proceedings that he has no agriculture land to attract the agricultural income nor he has got any business to introduce the capital of Rs.1,80,000/-, rather he is unaware as to who has filed the return of income in question lying at page 6 of the paper book.

8. When the factum of filing of the return of income in question on the basis of which addition has been made by the AO and affirmed by the Id. CIT (A) is examined in the light of the return of income claiming nil income filed by the assessee on 13.02.2008 undisputedly received and perused by the revenue authorities, the statement got recorded by the assessee during the assessment proceedings holds ground that since he does not own any agricultural land to attract agricultural income nor he has introduced any capital of Rs.1,80,000/- in the business rather he is

working on commission basis and he is earning Rs.3,000/- per month, the question of filing return of income in question does not arise.

9. Moreover, when AO himself has admitted in the assessment order that assessee is not owner of any agricultural land to carry out the agricultural activities nor it is proved during the assessment proceedings that assessee has introduced fresh capital of Rs.1,80,000/-, he was required to conduct the investigation as to who has filed the return of income on the basis of which addition has been made in suppression to the return of income showing nil income filed by the assessee. Even otherwise, assessee cannot be expected to file the return of income on the basis of forged document i.e. Khasra Khatoni / Kissan Bahi. There is not an iota of evidence on the file if any such income was earned by the assessee during the year under assessment.

10. So, we are of the considered view that the matter is required to be restored to the file of the AO to examine afresh if the assessee has any such source of income and earned the income in question during the year under assessment, in the light of the fact that assessee alleged to have not filed any such return, after providing an opportunity of being heard to the assessee in the light of the observations made herein before.

ITA No.843/Del/2015

11. Since the penalty order dated 11.03.2013 imposing penalty of Rs.87,312/- u/s 271(1)(c) of the Act is an off-shot of the assessment order dated 11.12.2008 affirmed vide impugned order passed by the Id. CIT (A), which stands set aside, the penalty proceedings are also not sustainable, hence set aside to be decided afresh after decision on the quantum proceedings, if any.

12. In view of what has been discussed above, both the aforesaid appeals filed by the assessee are hereby allowed for statistical purposes and files are ordered to be restored to the file of AO to decide afresh after providing an opportunity of being heard to the assessee.

Order pronounced in open court on this 3rd day of June, 2016.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 3rd day of June, 2016
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A), Meerut.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**