

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.5727/Del/2013
Assessment Year : 2008-09**

Arun Kumar Bansal, C/o Virendra Kumar Jain, 130, Rishabh Vihar, Karkardooma, Delhi. PAN : AALPB 8672 Q	Vs.	ITO, Ward 26(3), New Delhi.
(Appellant)		(Respondent)

Appellant by : Written Submission
Respondent by : Shri S. K. Jain, Sr.DR
Date of hearing : 08-02-2017
Date of pronouncement : 28-02-2017

ORDER

PER S.V. MEHROTRA, A.M :

This appeal has been filed by the assessee against the levy of penalty u/s 271(1)(c) of the Act in respect of addition made u/s 69A of Rs.20,97,900/- on account of alleged unexplained and un-proof cash deposits in the bank account of the assessee.

2. The assessee has filed written submissions, wherein, he has attached Tribunal's order vide ITA No.4716/Del/2012 relating to assessment year 2008-09, order dated 09.05.2014, wherein, the Tribunal has observed as under :-

"In the entirety of facts and circumstances, we are of the view that the facts involved in the subject matter have not been streamlined in a proper manner and the adverse inferences have been summarily drawn. If the assessee is owner of above pieces of land holding GPA, it gives a fair assumption that the land could be sold. Similarly, if

there is no subsequent deposit in assessee's bank account which may give indication that the sale price have been fetched by the assessee, then the issues are to be decided on the basis of preponderance of probabilities. In that eventuality such preponderance has to be reasonably worked out. Besides, copy of AIR information needs to be given to the assessee and the summons having not come back unserved or marked as no such person, implies that persons are available. In this eventuality relying on Hon'ble Supreme Court judgment in Orissa Corporation (supra), the AO has to bring the summons proceedings to a logical conclusion. Merely because summoned person did not respond, cannot be held against assessee. In these facts and circumstances, ends of justice will meet if the issue in question is set aside, restored back to the file of assessing officer to decide the same afresh, in the light of our observations, in accordance with law, after giving the assessee an opportunity of being heard. We order accordingly."

3. Since the assessment has been set-aside, therefore, the penalty has no legs to stand and is, therefore, deleted. However, the Assessing Officer would be entitled to take necessary action in accordance with law after giving effect to the Tribunal's order.

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

Order pronounced in the open court on this 28th day of February, 2017.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 28-02-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)-
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi