

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER  
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 2421/Del/2013  
AY: 2007-08**

Smt. Kamini Jain  
A 92, Gujrawalan Town  
Part I  
New Delhi 110 009

vs. ACIT, Circle 20(1)  
New Delhi

PAN: ADKPJ 7858 A  
**(Appellant)**

**(Respondent)**

**Appellant by** : Sh. Somil Aggarwal, Adv.  
& Ms. Poonam Ahuja, Adv.

**Respondent by** : Sh. Rishpal Bedi, Sr.D.R.

**ORDER**

**PER J.SUDHAKAR REDDY, A.M.**

This is an appeal filed by the assessee against the order dt. 30.01.2013 of Ld.CIT(A)-XXII, New Delhi for Assessment Year 2007-08.

2. The Ld.Counsel for the assessee submitted that the facts and grounds of appeal raised in this case are identical to the facts and grounds of the appeal raised by the assessee in the case of assessee's husband Shri Ashwani Jain in ITA 2422/Del/13 for the Assessment Year 2007-08 and that the Delhi 'A' Bench of the Tribunal in its order dt. 30.09.2015 has resolved the issue in favour of the assessee. The Ld.Sr.D.R. agreed that the penalty was levied for furnishing inaccurate particulars of income on unaccounted investments in connection of the property, which was surrendered during the course of survey equally in the hands of the husband of the assessee Shi Ashwani Jain at Rs.22,51,000/- and in the

hands of the assessee Smt.Kamini Jain of an equal amount of Rs.22,51,000/-.

3. After hearing rival submissions, we respectfully follow the order of the Coordinate Bench of the Tribunal in the case of Shri Ashwani Jain in ITA no.2422/Del/2013 for the Assessment Year 2007-08 vide order dt. 30.9.2015, where at paras 5 and 6 it is held as follows.

*“5. We heard the rival submissions of the parties and perused the material on record. In the instant case, the Assessing Officer levied a penalty of Rs.6,23,046/- vide order of penalty dated 30<sup>th</sup> June, 2010. On perusal of the penalty order, it is clear that the penalty was levied for furnishing inaccurate particulars of income and thereby concealed the particulars of income which means that this finding, in our considered opinion, is confusing and is not clear whether the Assessing Officer holding the assessee guilty of furnishing the inaccurate particulars of income or concealing the particulars of income. This goes to prove that the Assessing Officer had not arrived at the satisfaction as to the guilty state of mind of the assessee. Further, we find that the statement of surrender is the sole basis for making the addition of Rs.22,51,000/-, while surrendering this amount, the assessee clearly stated that the surrender is made with the intention of buying peace and avoiding unnecessary litigation and the amount surrendered cannot be co-related with incriminating materials found as a result of survey operations. Though the Assessing Officer and the CIT(A) recorded the finding that the assessee promised to produce the vouchers, which were not accounted in the books of account, failed to do so. It is a trite law that the onus always lies on the person who alleges in this case that it is the department who made an allegation that some vouchers found which were not accounted in the books of account. Therefore, it is the duty of the Revenue to prove that which vouchers were not accounted in the books of account. The Assessing Officer never brought any such vouchers on the record except making ipse dixit statement that some vouchers are found that apart, the Hon’ble Madras High Court in*

*the case of CIT Vs. S. Khader Khan Sons, 300 ITR 157 (Mad.) and the Hon'ble Kerala High Court in the case of Paul Mathews and Sons Vs. CIT, (2003) 263 ITR 101 (Ker.) had clearly held that no addition can be made based on the mere statement. The decision of the Hon'ble Madras High Court was approved by Hon'ble Supreme Court in the case of CIT Vs. Khader Khand Son, (2013) 352 ITR 480 (SC) after granting the leave. That apart, the CBDT which is the apex body in administering the provisions of Income Tax Act had issued Circle dt. 10<sup>th</sup> March, 2003 to its officers that no addition can be made on mere statement of assessee without bringing any independent incriminating material on record. Therefore, in the light of the above decision, the very addition made by the Assessing Officer is not free from doubt. The mere disallowance cannot be a sound basis for imposition of penalty. In this regard, we place reliance on the decision of coordinate bench of ITAT, Bombay in the case of Boston Consulting Group (Indi) Pvt. Ltd., (2011) 12 taxmann.com 278/47; SOT 25 (Mum.) URO. Further, we find from the penalty order that the Assessing Officer had not given a finding as to how and in what manner the assessee had furnished the inaccurate particulars of income resulting in addition except making a bald charge against the assessee that it had furnished inaccurate particulars of income and concealed the particulars of income. In the absence of any such findings, the penalty order cannot be sustained in the eyes of law and in support of this proposition, we rely on the decision of Hon'ble Supreme Court in the case of Dilip N. Shroff Vs. JCIT, (2007) 291 ITR 519, wherein the Hon'ble Supreme Court held as follows:*

*"83. It is of some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done. Thus, the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing the order of assessment laid emphasis that he had dealt with both the situations.*

*84. The impugned order, therefore, suffers from non-application of mind. It was also bound to comply with the principles of natural justice.*

[See Malabar Industrial Co. Ltd. v. Commissioner of Income Tax, Kerala State, (2000) 2 SCC 718J"

6. In the light of the above legal position, we have no hesitation to quash the penalty levied under Section 271 (1)(c) of the Act. Hence, the appeal filed by the assessee is allowed in full."

4. In the result the penalty in question as confirmed by the Ld.CIT(A) is hereby deleted and the appeal of the assessee is allowed.

5. In the result assessee's appeal is allowed.

Order pronounced in the Open Court on 04<sup>th</sup> December, 2015.

Sd/-

**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Sd/-

**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 04<sup>th</sup> December, 2015

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar