

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

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI C.M. GARG, JUDICIAL MEMBER**

**ITA No. 5100/Del/2014
AY: 2005-06**

Ashima Arora
9 A, North West Avenue
Punjabi Bagh
New Delhi 110 026

vs. ITO, Ward 25(3)
New Delhi

PAN: ADRPA 0415 D

(Appellant)

(Respondent)

Appellant by : Shri K.Sampath, Adv.
Respondent by : Sh. Ashish Mohanty, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals)-XXIV, New Delhi dated 23.6.2014 pertaining to the Assessment Year (A.Y.) 2005-06, wherein penalty levied u/s 271(1)(c) of the Income Tax Act 1961 (the Act) was confirmed.

2. Facts in brief:- The assessee is an individual. The A.O. in order passed u/s 143(3) of the Act r.w.s. 148 of the Act, has made an addition of unaccounted income, which, as per the A.O. was disguised as a gift. This addition was confirmed by the ITAT Delhi Benches SMC-2 in ITA 5099/Del/14 for the A.Y. 2005-06 vide order dt. 11.9.2015. The A.O. levied penalty u/s 271(1)(c) of the Income Tax Act 1961 on 24.7.2013. The Ld.CIT(A) confirmed the same.

3. Aggrieved the assessee is in appeal before us.
4. Ld.Counsel for the assessee Shri K.Sampath submits that the gift is a genuine gift and it is only because the assessee could not discharge the burden of proof that lay on her to prove the transaction to the satisfaction of the revenue authorities that the addition was made. He submits that gifts were received from Shri Ramesh Aggarwal and Shri Dilip Arora and that copy of gift deed, affidavit of the donor, income tax returns of the donor, and confirmations were furnished in support of the genuineness of the transaction. Thus he submitted that the assessee has neither concealed particulars of income nor furnished inaccurate particulars of income. He further submitted that the A.O. is not clear of the charge against him i.e. whether it is concealment of income or whether it is furnishing of inaccurate particulars of income and under those circumstances the penalty cannot be levied. He relied on the decision of the ITAT Delhi D Bench in the case of Shri Ratan Lal Chawla vs ITO in ITA no.5454/Del/2004 order dt. 29th July,2005 as well as the decision of the Jaipur SMC Bench in the case of Susheel Kumar Modi vs ACIT (2013) 58 SOT 155 (Jaipur Tribunal).
5. The Ld.D.R. submitted that there are no additional facts brought out by the assessee and that the gifts were held as non-genuine and that the assessee has concealed income by introducing bogus gifts. On merits, he relied on the order of the lower authorities and submitted that the penalty has to be upheld.
6. After hearing rival contentions we find that the Ld.CIT(A) at page 6 observed that the assessee has furnished a copy of income tax returns and affidavits of the donor in support of her claim to have received gifts of Rs.10 lakhs. He further observed that the assessee did not make efforts to produce the donors before the A.O. for verification. He also found that there were certain defects in the gift deed produced by the assessee and also that the donors have meagre income and hence the capacity to gift is not proved.
 - 6.1. In our view this is a case where, in the view of the revenue authorities, the assessee could not demonstrate beyond doubt, the

genuineness of the transaction. Addition has been made as the assessee could not produce the donors before the A.O. The income of the donors were examined but not their asset base or solvency. Not being able to prove a claim to the hilt is different from making a false and fabricated claim. Basic documents like confirmation letters, I.T. details, affidavits etc. were filed. No adverse material was collected by the A.O. The explanation of the assessee was rejected as not convincing. Under these circumstances we are of the considered view that penalty u/s 271(1)(c) of the Income Tax Act 1961 cannot be levied on the ground that there was concealment of income. Not being able to prove a claim to the satisfaction of the Revenue can be a good case for addition but not to levy penalty. Thus we delete the penalty levied u/s 271(1)(c) of the Income Tax Act 1961 as confirmed by the Ld.CIT(A) and allow the appeal of the assessee.

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

Order pronounced in the Open Court on 31st December,2015.

Sd/-
(C.M.GARG)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 31st December, 2015

**manga*

Copy of the Order forwarded to:

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

By Order

Asst. Registrar