

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F': NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5219/Del /2014  
Assessment Year: 2004-05**

**ITA No. 5220/Del /2014  
Assessment Year: 2004-05**

Rohini Contractors Pvt. Ltd., C/o Vinod Kumar Goel, 282, Boundary Road, Civil Lines, Meerut. (PAN: AABCR8721P)	vs	ITO, Ward 15(4), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri Vinod Kumar Goel, Adv.  
Respondent by : Shri Atiq Ahmad, Sr. DR

**Date of Hearing : 14.09.2017  
Date of Pronouncement: 20.09.2017**

**ORDER**

**PER BENCH**

ITA No. 5219/D/2014 has been preferred by the assessee against the order dated 16.07.2014 passed by the ld. CIT(A)-XVIII, New Delhi for assessment year 2004-05 whereas I.T.A. No. 5220/Del/2014 is assessee's

appeal for the same year against the order dated 17.7.2014 confirming penalty of Rs. 21,70,438/- imposed u/s 271(1)(c) of the Act. The grounds of appeal in I.T.A. No. 5219/Del/2014 read as under:-

*“1. That in this case, CIT(A) has not properly considered the written submission and case laws filed by the assessee therefore, penalty imposed by Assessing Officer and confirmed by CIT(A) is bad in law.*

*2. That in the written submission, the assessee has filed detailed reply with the case law which is not considered by the CIT(A) and CIT(A) has not justified confirming the penalty u/s 271(1)(c) of the I.T. Act.*

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

2. The assessee has filed revised grounds of appeal in I.T.A. No. 5219/Del/14 which read as under:-

*“1. That in this case Hon’ble I.T.A.T. direct CIT(A) to decide the appeal going into the merits of the case after providing proper and reasonable opportunity being heard to the assessee. The main contention of the assessee as per ground no. 1 & 2 that no notice U/s 147/143(3) was served upon the assessee. Although, Ld. CIT(A) discussed this issue but he has not appreciate that the assessee contention that notice U/s 147, 143(2), 142(1) was not served upon the assessee. Therefore, CIT(A) is in error in deciding first and second issue of the grounds of appeal taking by the assessee before CIT(A) at original stage.*

*2. That CIT(A) has not gone through the reason recorded by the A.O. was debatable and the A.O. has not applied*

*their mind while recording the reason he simply endorsed the letter written by Office of the Director of Income Tax Investigation, New Delhi. Hence, order made by the A.O. and confirm by CIT(A) is erroneous and against the facts and law.*

*3. That on merits also CIT(A) as well as A.O. has not considered the various case laws quoted by the assessee, therefore, order passed by CIT(A) as well as A.O. is against the facts, law and direction given by the I.T.A.T.*

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

3. Brief facts of the case are that the assessee company had filed its return of income for the relevant year declaring total income of Rs. 1,73,280/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called ‘the Act’). Subsequently, on the basis of information received from the Office of Director of Income Tax (Inv.), New Delhi that the assessee had allegedly received accommodation entries amounting to Rs. 1,25,00,000/- from various parties, reassessment proceedings were initiated u/s 147/148 of the Act. The assessee company failed to respond to the notice issued u/s 148 and thereafter, the Assessing Officer proceeded to complete the assessment u/s 147/144 of the Act at Rs. 62,23,280/- after adding an amount of Rs. 60,50,000/- as income from undisclosed sources u/s 68 of the Act. The assessee’s appeal before the ld. CIT(A) was also dismissed ex

parte qua the assessee as the assessee did not appear before the ld. CIT(A) also. On an appeal before the ITAT, ITAT Delhi Bench vide order dated 6.12.2013 in I.T.A. No. 2036/Del/2013 restored the case to the file of the ld. CIT(A) on the ground that there was no mention of the service of notice to the assessee in the order of the ld. CIT(A) and also on the ground that the ld. CIT(A) had dismissed the appeal ex parte without going into the merits of the case. Subsequent to the ITAT's order, the ld. CIT(A) again dismissed the assessee's appeal on merits on the ground that the assessee had failed to discharge the onus regarding accommodation entries as alleged in the letter received from the Director of Investigation. Meanwhile, penalty u/s 271(1)(c) against the quantum was also imposed which was upheld by the ld. CIT(A). Now, the assessee is before us in both the quantum as well as the penalty appeals.

4. Ld. AR submitted that although the ITAT had directed the ld. CIT(A) to adjudicate the issue on merits after providing reasonable opportunity of being heard, the same was not done by the ld. CIT(A). It was also submitted that the assessee had raised the issue of service of notice u/s 147/143(3) but the same had not been adjudicated by the ld. CIT(A). It was also submitted

that the ld. CIT(A) has not discussed the merits of the impugned addition but had simply based the adjudication on the letter written by the Director of Income Tax (Inv.). It was also submitted that before deciding the issue regarding service of notice, the confirmation of addition was bad in law and the consequential penalty was also not maintainable.

5. Learned Departmental Representative vehemently argued in support of the order of the ld. CIT(A) and submitted that the assessee had not made sincere efforts to discharge the onus cast upon him and, therefore, quantum addition as well as the penalty, both, were justified.

6. We have heard the rival submissions and carefully perused the relevant material placed on record. At the outset, we do feel that the assessee has been utmost careless in pursuing matters before the Assessing Officer as well as the ld. CIT(A). He did not appear before the ld. CIT(A) in the first round and in the second round has not made any efforts to discharge the onus cast upon it on merits but has simply harped on the issue of non-service of notice. However, a perusal of the impugned order i.e. the order passed by the ld. CIT(A) in the second round before him also reveals that the ld. CIT(A) has not adjudicated on the issue of

service of notice as agitated by the assessee and has confirmed the addition on merits by simply quoting the findings of the Assessing Officer and also on the letter received from Director of Income Tax (Inv.) without any examination. Therefore, looking into the entirety of circumstances, we are of the opinion that the interest of justice would be served if the quantum as well as the penalty files are restored to the file of the Assessing Officer for de novo adjudication after giving a proper opportunity to the assessee. We also direct that the assessee should fully cooperate with the assessing authority in both the matters this time, failing which the assessing authority shall be at liberty to draw an adverse inference. Accordingly, both the appeals stand allowed for statistical purposes.

7. In the result, the assessee's appeals stand allowed for statistical purposes.

The order is pronounced in the open court on 20<sup>th</sup> September, 2017.

**Sd/-**

**(G.D. AGRAWAL)  
PRESIDENT**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: September, 2017

'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

**ASSISTANT REGISTRAR**