

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6218/Del./2014
(ASSESSMENT YEAR : 2002-03)**

Shri Praveen Kumar, vs. CIT – XV,
Director, Supreme Agro Products Ltd., New Delhi.
39/1386, Chandni Chowk,
Delhi – 110 006.

(PAN : AAACS4291E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Deepak Garg, Senior DR

Date of Hearing : 28.09.2017

Date of Order : 29.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Shri Praveen Kumar, by filing the present appeal, sought to set aside the impugned order dated 16.09.2014 passed by the Commissioner of Income-tax-XV, New Delhi on the grounds inter alia that :-

“Before the IT AT New Delhi in the case of Praveen Kumar Director Supreme Agro Products ltd against the penalty order passed u/s 272a of the Income Tax Act 1961.

That on the facts and in circumstances of the case the order passed by CIT Appeals -XV for penalty u/s 272a is

not tenable under the law being passed in violation of principle of Natural Justice and Equity and liable to be dropped being the learned officer did not mention the time by which the reply should be submitted.

That the order passed by CIT Appeal-XV is for penalty u/s 272A for not providing the information in the matter of the assessment year 2002-03 and Ass.year 2004-05 which is erroneous in itself because the law does not mandate to keep records either in companies act or in income tax act for so much old period specially when no proceeding of assessment is pending against the company.

That the order passed by CIT Appeal-XV is otherwise factually wrong being inspite of the old records for such a period wherein the company was not mandated by law to keep record the available information has been submitted to the CIT Appeal-XV.

That the order passed by CIT Appeal -XV is otherwise factually wrong wherein he had alleged that no reply to his notice dated 3.9.2014 was submitted whereas due reply has been submitted to them towards such notice dated 3.9.14 on dated 16.9.2014 hence the penalty is liable to be deleted.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : during the appellate proceedings under section 250 of the Income-tax Act, 1961 (for short ‘the Act’) in case of one Shri Gautam Thadani, M/s. Supreme Agro Products was called upon to file the information vide letter dated 10.12.2013 by Id. CIT (A) to the following effect :-

"Mr. Gautam Thadani, C-31, Mayfair Garden, New Delhi has claimed to have been allotted 10,000 shares of your company, as an original allottee on 04.03.2002.

2. You are requested to kindly confirm whether shares were allotted to Mr. Gautam Thadani by your company on the above mentioned dates. In case such transactions are confirmed, kindly furnish the following documents to the undersigned:

(i) Copy of share application by Mr. Gautam Thadani.

(ii) Copy of the transfer deeds in respect of shares claimed to have been sold by Mr. Gautam Thadani.

(iii) Details of payment made by Mr. Gautam Thadani for the purpose of applying for shares.

3. You are also requested to furnish the details of prevailing market value of the shares as on the first date and as on the last date of May 2003, as mentioned in your annual accounts.

4 You are requested to furnish the above details by 26 December 2013.”

3. M/s. Supreme Agro Products furnished copy of share application form along with payment detail qua investment of Rs.2,00,000/- made by Shri Gautam Thadani, however remaining documents have not been furnished. Then reminders dated 09.01.2014 and 14.01.2014 were issued to furnish complete information. On failure of M/s. Supreme Agro Products, summon u/s 131 was issued to Shri Praveen Kumar to appear in person on 27.02.2014 at 12.00 AM failing which he will be liable for levy of penalty u/s 272A of the Act. On account of failure of Shri Praveen Kumar, Director of Supreme Agro Products to put in appearance before Id. CIT (A) in compliance to summon issued u/s 131, a penalty of Rs.10,000/- has been imposed u/s 272A of the Act.

4. Feeling aggrieved with the penalty order passed by Id. CIT (A), Shri Praveen Kumar has come up before the Tribunal by way of filing the present appeal.

5. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

6. We have heard the Id. Departmental Representative for the revenue 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.

7. Bare perusal of the penalty order passed by Id. CIT (A) goes to prove that initially M/s. Supreme Agro Products was called upon vide letter dated 10.12.2013 to furnish the requisite information in case of one Shri Gautam Thadani, to which M/s. Supreme Agro Products through its authorized signatory had duly replied vide letter dated 16.09.2014, available at page 11 on the appeal file, stating therein that as per provisions contained under the Companies Act, the company is required to keep the record for six years only and thereafter the old record is not maintained and dumped.

8. Thereafter, all of sudden, name of Shri Praveen Kumar, Director of M/s. Supreme Agro Products appeared and notice u/s 131 of the Act was issued to him but the penalty order itself is silent if the said notice issued u/s 131 of the Act was ever served

upon Shri Praveen Kumar. Be as that may be, Shri Praveen Kumar, Director of M/s. Supreme Agro Products even otherwise cannot be made liable for producing the record of M/s. Supreme Agro Products which is an independent entity (juristic person). Had Shri Praveen Kumar individually been served then he would have been made liable u/s 272A of the Act. Even otherwise, when M/s. Supreme Agro Products vide letter dated 16.09.2014 has duly replied that the remaining record is not available with them being more than six years old which the company is not required to maintain under the Companies Act, the question does not arise to initiate the penalty proceedings u/s 272A of the Act.

9. In view of what has been discussed above, we are of the considered view that Id. CIT (A) has erred in imposing the penalty of Rs.10,000/- u/s 272A of the Act, hence the same is hereby deleted. Consequently, the present appeal is hereby allowed.

Order pronounced in open court on this 29th day of September, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

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

**Dated the 29th day of September, 2017
TS**

Copy forwarded to:

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

AR, ITAT
NEW DELHI.
