

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-6063/Del/2015  
(Assessment Year: 2010-11)**

Chandra Prakash Goel C/o M/s RRA Tax India D-28, South Extension, Part-1, New Delhi. AATPG4288R	vs	ITO Ward-1 Hapur
<b>Assessee by</b>	<b>Sh. Somil Agrawal, Adv.</b>	
<b>Revenue by</b>	<b>Sh. Arun Kumar Yadav, Sr. DR</b>	

<b>Date of Hearing</b>	<b>19.09.2017</b>
<b>Date of Pronouncement</b>	<b>09.10.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, JUDICIAL MEMBER**

This is an appeal by the assessee challenging the order dated 31.08.2015 in appeal no. 170/2014-15/GZB passed by the Ld. Commissioner of Income Tax (Appeals), Ghaziabad (hereinafter for short called as the "Ld. CIT (A)").

2. Briefly stated facts are that the assessee is an individual deriving income from manufacturing and sale of bricks. For the AY 2010-11 he filed the return of income on 09.09.2010 declaring a total income of Rs.

2,87,080/-. During assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as the 'Act') AO made an addition of Rs. 62,39,059/- and Rs. 3,90,000/-. AO also initiated proceedings u/s 271(1)(c) of the Act by issuing a notice u/s 274 read with Section 271 of the Act on 26.03.2013, and concluded the same with levy of penalty of Rs. 19,04,700/- in respect of the concealed income of Rs. 62,39,059/-. The said addition was confirmed by the Ld. CIT (A) by way of impugned order. Hence, the assessee is before us in this appeal on the following grounds:

1. *"That having regard to the facts and circumstances of the case, the Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty of Rs. 19,04,700/- and that too without assuming jurisdiction as per law and without considering the facts and circumstances of the case.*
  2. *That in any case and in any view of the matter, action of Ld.CIT (A) in confirming the action of Ld. AO in levying penalty u/s 271(1)(c) is bad in law and against the facts and circumstances of the case.*
  3. *That the assessee craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other."*
3. At the outset it is brought to our notice by the Ld. AR that the quantum addition made by the AO by way of order dated 26.03.2013 was the subject matter in ITA No. 3032/Del/2014 before the coordinate bench of this Tribunal and by way of order dated 20.03.2017 vide paragraph no. 3.9.12 this Tribunal remanded such an issue, to the file of the Assessing Officer to compute the capital gains in terms of Section 45(2) of the Act and business income from the transaction, with reference to the fair

market value of the land and after hearing the parties. A copy of the order is produced before us and on a perusal of the same, we are satisfied that the quantum addition no longer exist, as such, the penalty does not survive on such non existent quantum addition. However, since we are unable to address the issue as to whether there is any concealment of income or furnishing of inaccurate particulars, we deem it fit to set aside the issue to the file of AO with a direction to reconsider the same after the fresh computation of income is made. With this view of the matter, we allow the appeal of the assessee for statistical purpose.

4. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 09.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 09.10.2017

\*Kavita Arora

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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**ASSISTANT REGISTRAR  
ITAT NEW DELHI**