

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

I.T.A. No.1538 /Del/2017

AY: 2012-13

Premium Buildwell Pvt. Ltd. A-35, Prashant Vihar New Delhi  <b>PAN-AADCP9915B</b>	Vs.	ITO Ward-12(1) New Delhi
[Appellant]		[Respondent]

Assessee by:	Sh. R.K. Bhalla, CA
Respondent by:	Sh. T. Vasanthum, Sr. D.R.

Date of Hearing:	27	09	2017
Date of Pronouncement:	29	09	2017

**ORDER**

**PER R.K. PANDA, A.M:**

This appeal filed by the assessee is directed against the order dated 14<sup>th</sup> February, 2017 passed by the CIT(A)-12 New Delhi relating to assessment year 2012-13.

2. Levy of penalty of Rs. 8,33,100/- by the AO and upheld by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. The learned counsel for the assessee submitted that the assessee is a company engaged in the business of building shops, malls etc,. It filed its return of income on 28<sup>th</sup> September, 2012 declaring total income of Rs. 97,180/-. The AO completed the assessment under section 143(3) on a total income of Rs. 27,93,180/- wherein he had made addition of Rs. 26,96,000/- on account of

cash credits under Section 68 of the I.T. Act. The assessee filed an appeal before the CIT(A) who gave part relief to the assessee wherein an amount of Rs. 7,36,000/- was deleted. He submitted that the AO initiated penalty proceedings under Section 271(1)(c) of the Income Tax Act and levied penalty of Rs. 8,33,100/- which has been upheld by the CIT(A).

4. He submitted that apart from various grounds, the assessee had taken a specific ground before the CIT(A) that no notice has been served on the assessee before levy of such penalty. However, the learned CIT(A) has not adjudicated the said ground. He submitted that the penalty order of the AO also does not mention service of any notice to the assessee. Therefore, the penalty levied by the AO and upheld by the CIT(A) is not proper. Further, the penalty has been levied for concealment of income and furnishing of inaccurate particulars i.e. on both clauses and it is not specifically mentioned under which clause the penalty has been levied. He accordingly submitted that the penalty so levied by the AO and upheld by the CIT(A) be cancelled. In his alternate contention he submitted that he has no objection if the matter is set aside to the file of the CIT(A) with a direction to adjudicate the specific ground raised before him.

5. The learned DR, on the other hand while supporting the order of the CIT(A) submitted that he has no objection if the matter is restored to the file of the CIT(A) with a direction to adjudicate the issue afresh on legal grounds.

6. After hearing both the sides, I find the assessee had taken a specific ground before the CIT(A) that the penalty order has been passed without service of any show cause notice and the AO has failed to specify the charge for which penalty is sought to be levied. Since, the order of the CIT(A) is silent on this vital ground as per ground no. 3 before him therefore, I deem it proper to restore the issue to the file of the CIT(A) with a direction to adjudicate the

issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.09.2017.

**Sd/-**  
**[R.K. PANDA]**  
ACCOUNTANT MEMBER

DATED: 29.09.2017

SH

Copy forwarded to:-

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

Assistant Registrar

Sl. No.	Particulars	Date
1.	Date of dictation	
2.	Date on which the draft is placed before the Dictating Member	
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	