

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUCHITRA KAMBLE, JUDICIAL MEMBER
ITA No.360/Del/2016
Assessment Year : 2007-08**

Pardeep Kumar C/o. M/s. RRA TAX INDIA, D-28, South Extension, Part-I New Delhi	Vs.	ITO Ward-3 Rohtak
PAN : AQKPS5702K		
(Appellant)		(Respondent)

Assessee by : Shri Ashwani Taneja, Adv.
Department by : Shri R.C.Dande, Sr. DR
Date of hearing : 20-09-2017
Date of pronouncement : 28 -09-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 26.11.2015 of the CIT(A)-2, Gurgaon relating to assessment year 2007-08.

2. Levy of penalty of Rs. 6,41,580/- by the AO u/s 271(1)(c) of IT Act and confirmed the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of Income on 11th July, 2007 declaring taxable income of Rs. 1,03,540/- and agricultural income of 40,250/-. The AO completed the assessment on a total income of Rs. 20,90,630/- by making various additions which included additions of Rs. 19,80,000/- u/s 69 of the I.T.Act, 1961 on account of cash deposits in the bank account maintained with Corporation Bank. Similarly, the AO had also made addition of Rs. 40,250/- by treating agricultural income as income from other sources. The appeal of the assessee before the CIT(A) was dismissed. Subsequently, the AO initiated penalty proceedings u/s 271(1)(c) of the IT Act. Rejecting the various explanation given by the assessee, the AO levied penalty of Rs. 6,41,580/- being 100% of tax sought to be avoid.

4. Since there was delay in filing of the appeal, the assessee filed a condonation petition before CIT(A) explaining the reasons for such delay. However, the Id. CIT(A) held that there was no genuine cause for such delay in filing the appeal and accordingly dismissed the appeal filed by the assessee on the ground that the same has been filed out of time.

5. Aggrieved with such order of CIT(A), the assessee is in appeal before the Tribunal with the following grounds :-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in dismissing the appeal of assessee as out of time and that too without appreciating the facts and circumstances of the case and has further erred in not deciding the appeal on merits.*

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty of Rs.6,41,580/- and that too without assuming jurisdiction as per law and without considering the facts and circumstances of the case and without providing adequate opportunity of being heard.*

3. *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(l)(c) is bad in law and against the facts and circumstances of the case.

4. *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.”*

6. The Id. Counsel for the assessee filed a copy of the order of the Tribunal in assessee's own case in the quantum proceeding and submitted that the addition on which penalty has been levied by the AO has been deleted by the Tribunal. He, however, submitted that he has no objection if the matter is restored to file of the CIT(A) with a direction to adjudicate the appeal on merit after condoning the delay.

7. The Id. DR on the other hand heavily relied on the order of the AO and the CIT(A).

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the Assessee. We have also considered the decision of the Tribunal in assessee's own case. We find the AO made addition of Rs. 19,30,000/- being cash deposit in the bank account of the assessee u/s 69 of the IT Act. Similarly, the AO had also made addition of Rs. 40,250/- treating the agricultural income declared by the assessee as income from other sources. Since the assessee could not succeed in appeal before the CIT(A), the AO initiated penalty proceedings and levied penalty of Rs. 6,41,580/- u/s 271(1)(c) of the IT Act which has been confirmed by the CIT(A). We find the Id. CIT(A) confirmed the penalty so levied by the AO on the ground that the appeal was filed belatedly and the delay in such filing of the appeal was not explained before him to his satisfaction. It is the submission of the Ld. Counsel for the assessee that the Tribunal has deleted the major addition of 19,30,000/- in the order passed vide ITA no. 2150/Del/2011 order dated 30.11.2012 for assessment year 2007-08. Although the order was passed before the CIT(A) confirmed the penalty so levied, however, the same was not considered by the CIT(A) before dismissing the

appeal treating the same is time barred. Since the major addition of Rs. 19,30,000/- has been deleted by the Tribunal in the quantum proceedings, therefore, in all fairness and in the interest of justice, we deem it proper to restore the matter to the file of the CIT(A) with the direction to sympathetically consider the delay in filing of the appeal and adjudicate the issue on merit. We hold in direct accordingly. The grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 28 September, 2017.

Sd/-

(SUCHITRA KAMBLE)

JUDICIAL MEMBER

Sd/-

(R. K. PANDA)

ACCOUNTANT MEMBER

Dated: 28-09-2017.

Sujeet/ Binita

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The DRP-IV, New Delhi
- 4) The DR, I.T.A.T., New Delhi

By Order

Assistant Registrar
ITAT, New Delhi

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	22.09.2017		Sr. PS/PS
2	Draft placed before author	22.09.2017		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on	.9.2017		Sr. PS/PS
7	Date of uploading of Order	.9.2017		Sr. PS/PS
8	File sent to Bench Clerk	.9.2017		Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			