

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. No. 2978/DEL/2016	
	A.Y : 2005-06	
SH. SUNIL KUMAR AGGARWAL, 2165, GALI HANUMAN PRASAD, MASJID KHAZOR, CHANDNI CHOWK, DELHI - 110 006 (PAN: AAEP6306K)	VS	ITO, WARD-29(2) OLD WARD, NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Satish Khosla, Adv.
Department by : Ms. Ashna Paul, Sr. DR

ORDER

The Assessee has filed this Appeal against the impugned Order dated 18.3.2016 passed by the Ld. CIT(A)-34, New Delhi, relevant to assessment year 2005-06.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not disputed for the sake of brevity.

3. Ld. Counsel of the assessee has stated that at the time of filing the Appeal the Defect Notice was issued to the Assessee stating that Tribunal's fees short by Rs. 9500/-. However, Ld. Counsel of the assessee has stated that this Appeal is relating to penalty under section 271(1)© and will be governed by Clause (d) of

Section 253(6) of the I.T. Act, 1961 and therefore, the Tribunal Fee of Rs. 500/- deposited with the Appeal is correct. In order to support his view, he relied upon the decision dated 14.1.2002 of the ITAT, Delhi 'B' Special Bench in the case of Vinod Khatri vs. DCIT wherein the majority of the Members held that Tribunal Fee for filing the appeals relating to penalty under section 271(1)© will be governed by clause (d) and not clause (a), (b) and (c) of Section 253(6) of the Act. In view of the above, he requested that the defect pointed by the Registry of Short Fee is not sustainable in the eyes of law, hence, the same may be withdrawn.

3.1 Ld. Counsel of the assessee further stated that hat ITAT vide Order dated 03.03.2017 passed in ITA No. 1740/Del/2012 (AY 2005-06) in assessee's own case set aside the quantum addition and restored back the same to the file of the AO in light of the ITAT 'G' Bench dated 17.5.2016 passed in the case of Santosh Aggarwal vs. ITO. Therefore, he stated that penalty in dispute does not stand in the eyes of law. Hence, the penalty in dispute may be deleted by allowing the appeal of the assessee.

4. On the contrary, Ld. DR relied upon the orders of the authorities below and opposed the request of the Ld. Counsel of the assessee.

5. I have heard both the parties and perused the records, especially the impugned order as well as the Tribunals orders, as mentioned above. As far as

defect pointed out by the Registry relating to Tribunal's short fee by Rs. 9500/- is concerned, I note that the present Appeal is relating to penalty under section 271(1)© and will be governed by Clause (d) of Section 253(6) of the I.T. Act, 1961 and therefore, the Tribunal Fee of Rs. 500/- deposited with the Appeal is correct. To support my aforesaid view, I draw support from the decision dated 14.1.2002 of the ITAT, Delhi 'B' Special Bench in the case of Vinod Khatri vs. DCIT wherein the majority of the Members held that Tribunal Fee for filing the appeals relating to penalty under section 271(1)© will be governed by clause (d) and not clause (a), (b) and (c) of Section 253(6) of the Act. In view of the above, I do not find any defect in filing the Appeal and therefore, I proceed to decide the Appeal further.

5.1 I further find that ITAT vide Order dated 03.03.2017 passed in ITA No. 1740/Del/2012 (AY 2005-06) in assessee's own case has set aside the quantum addition and restored back the same to the file of the AO in light of the ITAT 'G' Bench dated 17.5.2016 passed in the case of Santosh Aggarwal vs. ITO. The facts and findings in the quantum Appeal, narrated by the ITAT 'G' Bench, New Delhi in its Order dated 03.3.2017 passed in ITA No. 1740/Del/2012 (AY 2005-06) in the assessee's case are given in para 5 to 7 at page nos. 3 to 5 of the order. For the sake of convenience, the relevant paras are reproduced hereunder:-

“5. We have heard both the parties and perused the records, especially the impugned order passed by the Ld.CIT(A) and the decision dated 17.5.2016 referred by the Ld. Counsel of the assessee of the ITAT, ‘G’ Bench, Delhi in the case of Santosh Aggarwal vs. ITO passed in ITA No. 1741/Del/2012 (AY 2005-06). For the sake of clarity, I am reproducing the finding given by the Tribunal vide para no. 7 & 8 vide its order dated 17.5.2016 in assessee’s own case are as under:-

“7. We have heard both the parties and perused all the records. The objection letter dated 16.06.2008 was clearly mentioned in the assessment order. Despite taking note of the same, the AO failed to take any decision on the said objections. The CIT(A) totally over looked the fact that objections of the assessee were not dealt by the AO. In view of this, it will be proper, if the objections are considered and decided by the AO in the interest of justice. Both the sides are agreed to this proposition. It is hereby

directed to the AO to decide the objection dated 16.6.2008 filed by the assessee before taking up the assessment. Needless to say, the assessee be given full opportunity to be heard.

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

6. After perusing the aforesaid decision dated 17.5.2016 of the ITAT, 'G' Bench, New Delhi in the case of Santosh Aggarwal vs. ITO passed in ITA No. 1741/Del/2012 (AY 2005-06), I am of the considered view that the issue in dispute is squarely covered by the aforesaid decision, because the facts and circumstances of the present case are exactly similar and identical to that case. Therefore, respectfully following the aforesaid decision dated 17.5.2016 of the ITAT, 'G' Bench, Delhi, as aforesaid the issue involved in ground no. 3 is restored back to the file of the Assessing Officer in the light of the decision of the ITAT, 'G' Bench dated 17.5.2016 passed in the case of Santosh Aggarwal vs. ITO (Supra).

7. In the result, the appeal of the Assessee is allowed for statistical purposes.”

6. After going through the aforesaid findings of the Tribunal, I am of the view that in the quantum appeal the issue in dispute has been set aside and restored back to the AO, in the aforesaid manner, by the Order dated 03.3.2017 passed in ITA No. 1740/Del/2012 (AY 2005-06), therefore, the penalty in question does not stand in the eyes of law. Hence, the penalty in dispute stands deleted. However, the AO is at liberty to initiate the fresh penalty proceedings, if any, as per Rules.

7. In the result, the appeal of the Assessee stands allowed.

Order pronounced in the Open Court on 27/11/2017.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

“SRBHATNAGAR”

Date: 27/11/2017

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Benches

