

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 4766/Del/2015  
A.Y. 2006-07**

**ITA No. 4767/Del/2015  
A.Y. 2009-10**

**ITA No. 4768/Del/2015  
A.Y. 2010-11**

Sri Prateek Juyal 204, Silver Oak Appt. Curzon road Dehradun  PAN: ADVPJ2863Q	<b>vs.</b>	DCIT Central Circle 13A, Subhasg Road Dehradun
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Sh.Vijay Agarwal, CA
<b>Respondent by</b>	Sh. Atiq Ahmad, Sr.D.R.
<b>Date of Hearing</b>	23 <sup>rd</sup> November, 2017
<b>Date of Pronouncement</b>	29 <sup>th</sup> November, 2017

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

The present penalty appeals have been filed by assessee against orders passed by Ld. CIT(A), Dehradun dated 14/05/15 for assessment years 2006-07, 2009-10 and 2010-11 on the following grounds of appeal:

ITA .No. 4766/Del/2015

*“The Appellant respectfully craves leave to object to the impugned order appealed against on the following grounds.*

- 1. That the ld.CIT(A) erred on facts and circumstances of the appellant’s case in confirming the impugned penalty of Rs.2,08,000/- imposed by the ld.AO u/s 271(1)(c ) of the Act on the appellant.*

*The appellant craves leave to reserve his right to add to, delete from, amend, alter or modify his ‘grounds of appeal’ at any time before or at the time of hearing.*

ITA .No. 4767/Del/2015

*“The Appellant respectfully craves leave to object to the impugned order appealed against on the following grounds.*

- 1. That the ld.CIT(A) erred on facts and circumstances of the appellant’s case in confirming the impugned penalty of Rs.1,23,900/- imposed by the ld.AO u/s 271(1)(c ) of the Act on the appellant.*

*The appellant craves leave to reserve his right to add to, delete from, amend, alter or modify his ‘grounds of appeal’ at any time before or at the time of hearing.*

ITA .No. 4768/Del/2015

*“The Appellant respectfully craves leave to object to the impugned order appealed against on the following grounds.*

- 1. That the ld.CIT(A) erred on facts and circumstances of the appellant’s case in confirming the impugned penalty of Rs.1,28,400/- imposed by the ld.AO u/s 271(1)(c ) of the Act on the appellant.*

*The appellant craves leave to reserve his right to add to, delete from, amend, alter or modify his ‘grounds of appeal’ at any time before or at the time of hearing.*

2. Brief facts of the case are as under:

A search was conducted at business and residential premises of assessee and assessment was completed under section 153A (1) (b)/143 (3) of the Act on 28/03/13, the details of which are as under:

S.No.	Asst.Yr.	Original return filed on 31/08/12	Assessed income
1.	2006-07	Rs. 9, 90, 390/-	Rs.16,08, 200/-
2.	2009-10	Rs. 5, 07, 600/-	Rs. 9, 08, 440/-
3.	2010-11	Rs. 15, 75, 640/-	Rs.24,45, 290/-

During the penalty proceedings it was observed by Ld. AO that the search team had seized various diaries pertaining to different years containing details of various receipts and expenses, from the residence of assessee. Against these diaries, assessee made a disclosure in the following manner:

S.No.	Asst.Yr.	Disclosures made
1.	2006-07	Rs. 6,17,814/-
2.	2009-10	Rs. 4,00,840/-
3.	2010-11	Rs. 4,15,427/-

Assessing officer accordingly made addition in the hands of assessee to the extent of disclosure as admittedly it pertained to various years detailing receipts and expenses. Ld. AO thus came to the conclusion that assessee had concealed the income to the extent of the amount disclosed in the original return of income filed. He thus levied penalty under section 271 (1) (c) of the Act.

Thereafter assessing officer initiated penalty proceedings and levied minimum penalty as under:

S.No.	Asst.Yr.	Penalty levied
1.	2006-07	Rs.2,08,000/-
2.	2009-10	Rs.1,23,900/-
3.	2010-11	Rs.1,28,400/-

3. Aggrieved by the penalty order levied, assessee preferred appeal before Ld. CIT (A). The Ld. CIT (A) confirmed the penalty levied by Ld. AO for all the years under consideration and held as under:

*“7. In the instant case, not only did the assessee not include the receipts contained in the said diary in his return of income filed before the date of search, he also did not include them in the return filed in response to notice u/s 153A(1)(a) of the Income Tax Act, 1961 (the Act). It was only when the AO asked about how the entries in the diary were accounted for in his income that he chose to surrender the amount. Thus, he has clearly concealed his income within the meaning of Explanation 5A to section 271(1)(c), and as the AO has pointed out, the details were maintained in the diary quite meticulously, so there was no reason for him to estimate his income ignoring the entries therein. Hence there is no reasonable cause within the meaning of section 273B of the Act. The penalty levied by the AO is therefore justified and it is accordingly confirmed.”*

4. Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

5. Ld.AR submitted that assessee has not preferred any appeal against the quantum addition. It has been submitted that

inadvertently the expenses and the personal income recorded in the diaries were left out to be calculated by his accountant, which were seized during search proceedings.

5.1. On the contrary Ld. DR submitted that had the search not taken place, assessee would not have surrendered the undisclosed receipts. It was submitted that even after the disclosure was made during the search, the returns filed in response to notice under section 153A did not include surrendered income. Ld. DR submitted that it was subsequently during the course of assessment proceedings, assessee surrendered the receipts and paid tax on them.

6. We have perused the submissions advanced by both the sides in the light of the records placed before us. It is observed that Ld.AR has not disputed the fact that there was no reasonable cause which abstained assessee from disclosing the income recorded in the diaries seized.

7. In our opinion concealment takes place on the date when return is filed without disclosing full and true particulars of income of that year, as has been held by the Hon'ble Apex court in the case of Brijmohan vs. CIT reported in 120 ITR 1. Hon'ble Supreme Court has held that, law which prevails on date of filing such return would be applicable for levy of penalty. Further as considered by Hon'ble Supreme Court in the case of Mak Data (P) Ltd., Vs. CIT reported in 358 ITR 593, there cannot be any surrender of income, with a view to avoid litigation or to buy peace, channelize energy

and resources towards productive working and to make amicable settlement with the Income Tax Department.

7.1. It is a trite law that voluntary disclosures do not release assessee from mischief of penal proceedings. Law does not provide that when assessee returns a voluntary disclosure of his concealed income, he can be absolved from penalty. As already stated, the penalty is levied with reference to original return of income, and not with reference to the assessment made consequent to the disclosure by assessee.

7.2. In view of the above we are of the considered opinion that no infirmity could be found in the order passed by Ld.CIT(A). Accordingly the grounds raised by assessee for all the assessment years under consideration stand dismissed.

8. In the result appeals filed by assessee stand dismissed for all the years under consideration.

Order pronounced in the open court on 29<sup>th</sup> November, 2017.

Sd/-  
**(R.S. SYAL)**  
**Vice President**

Sd/-  
**(BEENA A PILLAI)**  
**Judicial Member**

Dated 29<sup>th</sup> November, 2017.

\*mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar  
ITAT, Delhi Benches, New Delhi

**ITA Nos. 4766-4767-4768/Del/15**  
**Assessment Year : 2006-07, 2009-10 and 2010-11**  
**Sh.Prateek Juyal, Dehradun**

		Date	
1.	Dragon dictation	27.11.2017	
2.	Draft placed before author	28.11.2017	
3.	Draft proposed & placed before the second Member		
4.	Approved Draft comes to SrPS/PS		
5.	Kept for pronouncement on	29.11.2017	
6.	File sent to Bench Clerk		
7.	Order uploaded		