

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F", NEW DELHI  
BEFORE SHRI G.D. AGRAWAL, PRESIDENT  
AND  
SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A. Nos. 219 & 220/Del/2016		
A.Y. : 2011-12		
AVDESH KUMAR PANDEY, C/O BIMLESH JHA, RZ-9, 1 <sup>ST</sup> FLOOR, GALI NO. 5, WEST SAGARPUR, NEW DELHI (PAN: AVUPP3863H)	VS.	DCIT, CENTRAL CIRCLE-13, NEW DELHI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by : Sh. K. Sampath, Adv.]  
Department by : Sh. Atiq Ahmad, Sr. DR

**PER BENCH**

These two Appeals filed by assessee are directed against the separate orders of the Ld. CIT(A) i.e. for the quantum addition as well as penalty u/s. 271(1)(c) of the I.T. Act, 1961 relating to same assessment year i.e. AY 2011-12. Since the issues involved in these appeals are inter-connected, hence, these appeals are being consolidated by this common order for the sake of convenience, by dealing with Quantum Appeal No. 219/Del/2016 (AY 2011-12).

2. The ground raised in Quantum Appeal being ITA No. 219/Del/2016 (AY 2011-12) read as under:-

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the following actions of the AO:

1. in framing assessment u/s. 144 of the Act without providing due and adequate opportunity of hearing and doing so at an income of Rs. 55,89,197/- against the returned income at Rs. 10,48,740/- without any jurisdiction;
2. making following additions to the returned income by invoking provisions of section 68 of the Act:
  - a) Rs. 20,75,921/- on account of deposits in State Bank of India.
  - b) Rs. 24,11,475/- on account of deposits in ICICI Bank;
  - c) Rs. 52,963/- on account of amount received from SGI Group.

Both the above action being arbitrary, erroneous, unjustified, untenable and unlawful must be quashed with direction for appropriate relief.”

3. The grounds raised in Penalty Appeal being ITA No. 220/Del/2016 (AY 2011-12) read as under:-

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the order passed by the AO u/s. 271(1)(c) of the Income Tax Act, 1961 holding the assessee guilty of furnishing inaccurate particulars of income. The action being arbitrary, erroneous, unjustified, untenable and unlawful must be quashed with direction for appropriate relief.

4. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

5. At the time of hearing, Ld. Counsel of the assessee has stated that AO has completed the assessment u/s. 144 of the Income Tax Act, 1961 (hereinafter referred as the Act) on 15.3.2013. He further stated that assessee has not received any notice of hearing and therefore, sufficient opportunity has not been given by the AO to substantiate the claim of the assessee. He further stated that the Ld. CIT(A) has also decided the appeal of the assessee without properly considering the written submissions filed before the Ld. CIT(A) as well as additional evidence filed before him and additional ground. Therefore, he requested to set aside order of the Ld. CIT(A) and restore back the matter to file of the AO for fresh consideration in the quantum appeal as well as in penalty appeal, as per law, after giving adequate opportunity of being heard to the assessee.

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

7. We have heard both the parties and perused the records. We find that the AO has completed the assessment u/s. 144 of the Income Tax Act, 1961 on 15.3.2013. We find force in the contention of the Id. counsel of the assessee that assessee has not received any notice of hearing and sufficient opportunity has not been given by the AO and Ld. CIT(A) has not properly considered the written submissions filed before the Ld. CIT(A) as well as additional evidence filed before him and additional ground. Therefore, in the interest of justice, we set aside the order of the Ld. CIT(A) and restored back the issue in dispute raised in the quantum appeal to the file of AO for fresh adjudication, after giving adequate opportunity of being heard to the assessee. The Assessee is

also directed to fully cooperate with the AO in the proceedings and did not take any unnecessary adjournment.

7.1 As regards the Penalty appeal is concerned, since we have already set aside the order of the Ld. CIT(A) in quantum appeal, as aforesaid and restored back the issues in dispute to the file of the AO for adjudication, therefore, at this juncture, the penalty in dispute does not stand in the eyes of law, hence, the same is deleted as such.

8. In the result, the quantum appeal being ITA No. 219/Del/2016 (AY 2011-12) stands allowed for statistical purposes and penalty Appeal being ITA No. 220/Del/2016) (AY 2011-12) stands allowed.

Order pronounced on 19-12-2017.

Sd/-  
[G.D. AGRAWAL]  
PRESIDENT

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

*Date 19/12/2017*

**“SRBHATNAGAR”**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar,  
ITAT, Delhi Benches