

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No.376/ASR/2017  
Assessment Year : 2007-08

Dr. Jasleen Kaur,  
C/o M/s Orthonova Hospital,  
Nakodar Road,  
Jalandhar.

Vs. ACIT,  
Circle-II,  
Jalandhar.

PAN: ABIPK6994L

(Appellants)

(Respondents)

Assessee By	:	Shri Surinder Mahajan, CA
Department By	:	Shri S.S. Negi
Date of Hearing	:	19.02.2018
Date of Pronouncement	:	20.02.2018

ORDER

PER R.S. SYAL, VP:

This appeal filed by the assessee is directed against the order passed by the CIT(A) on 24.04.2017, confirming the penalty of

Rs.6,73,200/- imposed by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the Assessment Year 2007-08.

2. Briefly stated, the facts of the case are that a search and seizure action was taken u/s 132 of the Act at the business-cum-residential premises of the assessee. Based on certain incriminating material found during the course of search, the Assessing Officer made an addition of Rs.30 lac. Thereafter, penalty was imposed with reference to such addition. The Id. CIT(A) deleted the addition in quantum proceedings. However, the Tribunal overturned the order of the Id. CIT(A). The Id. AR submitted that the assessee challenged the confirmation of addition before the Hon'ble High Court, which has remitted the matter back to the Id.CIT(A) for fresh adjudication of the matter. Now the assessee is in appeal against the order confirming the penalty imposed w.r.t. the addition, which stands restored to the Id. CIT(A).

3. We have heard both the sides and perused the relevant material on record. It is noticed that the foundation for the instant penalty is the

quantum addition which has been eventually restored by the Hon'ble High Court to the file of the Id. CIT(A) for taking a fresh decision in accordance with the law. Under these circumstances, we are of the considered opinion that it would be in the fitness of things if the matter concerning the penalty on such amount is also sent back to be decided in conformity with the view taken by the Id. CIT(A) in the proceedings pursuant to the directions given by the Hon'ble High Court. Our view in restoring the penalty to the Id. CIT(A) is fortified by the judgment of the Hon'ble Supreme Court in the case of *Mohd. Mohatram Farooqui vs. CIT (SC) 2010-TIOL-23-SC-IT* in which it has been held that if addition is restored to the AO, then penalty should also be restored. The Hon'ble Delhi High Court in *Sanjay Gupta vs. CIT (2014) 366 ITR 18 (Del)* has also held that where the quantum has been remanded to the AO, the question of penalty on account of the said amount being treated as undisclosed income, should also be remanded to the AO. We, therefore, set aside the impugned order and remit the matter to the file of the Id. CIT(A) for determining the question of imposition or otherwise of the penalty on this issue, after deciding the point on merits. Needless to say,

the assessee will be allowed a reasonable opportunity of hearing in this regard.

4. In the result, the appeal is allowed for statistical purposes.

The order pronounced in the open court on 20.02.2018.

Sd/-

[N.K. CHOUDHRY]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 20<sup>th</sup> February, 2018.

dk

Copy forwarded to:

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

AR, ITAT, AMRITSAR.