

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.457(Asr)/2017
Assessment Year:2010-11

Shri Prem Pal Gandhi
K.C.Tower, Chandigarh Road,
Nawanshahar

Vs. Asst. CIT,
Central Circle-II
Jalandhar

PAN:AAQPG6508D

(Appellant)

(Respondent)

Appellant by: Sh. M.R.Bhagat &
CA, Rajinder Kumar Chopra

Respondent by: Sh. P.K.Sharma (Ld. DR)

Date of hearing: 28.02.2018

Date of pronouncement: 27.03.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 21.04.2017 passed by the Ld. CIT(A)-5, Ludhiana, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The sole ground of appeal raised by the assessee is as under.

“That the learned CIT(A) erred in confirming penalty of Rs.32,600/- on estimated addition of Rs.3,26,000/- ignoring the fact that undisclosed income is defined in clause (a) (i) of explanation to section 271AAA of the Act; which means money, bullion, jewellery.....or entry in books of account or other documents.....found in the course of search. It is prayed that penalty may be deleted.”

3. The brief facts of the case are that in the instant case, the Assessing Officer made an addition of Rs.22,76,000 on account of differences of commission alleged to be received and shown as actually received, which was challenged before the Id. CIT(A), who while partly deleting the said addition opined that the figure of Rs.30 Crores has not been worked out in systematic manner by the Assessing Officer as he has not been able to show, as to how this figure has been arrived at, in the assessment order. The photocopies of seized record submitted by the appellant had been perused and it is seen that there are huge nos. of noting on the impugned seized document and it is practically impossible to make a sensible total out of the same and, therefore, figure of Rs.30 Crores does not have very clear arithmetical basis and the adoption of 1.5% as rate of commission is on the basis of presumption and finally it was concluded by the Id. CIT(A) that in all, the working out of the gross commission on figure of Rs.30 Crores is arbitrary and the adoption of rate of 1.5% is also not based upon recordings done on the seized document and in that circumstances, total net income from commission as Rs.30,00,000/- seems best course of action. On the basis of partly confirmation of addition on account of commission

received, the Assessing Officer imposed the penalty to the tune of Rs.32,600/- which was challenged before the Ld. CIT(A), who also confirmed the same.

4. We have heard the parties and gone through with the facts and relevant material placed on record as it reflects from the orders passed by the A.O that in the instant case the addition was made on the basis of mere estimation of Rs.22,76,000/- on account of differences in commission estimated by the AO. The said amount was restricted to Rs.3,26,000/- only by the Ld. CIT(A) and on the basis of the same the AO levied the penalty u/s 271AAA of the Act, wherein the explanation describes penalty to be imposed for undisclosed income. The said penalty was confirmed by the Ld. CIT(A). Although, it was argued by the Ld. DR that the addition has been made on the basis of search and seizure operation carried out by the Revenue Department at the premises of the assessee, however, we are of the considered opinion that in the aforesaid circumstances, where the Ld. CIT(A) in quantum order itself observed that the Assessing Officer has not based the estimation of figure on any recordings done by the assessee on seized document but purely on the basis of presumption and worked out the gross commission on estimated figure, which is arbitrary.

5. On the aforesaid analyzation, we are of the considered opinion that imposition of penalty under the peculiar facts and

circumstances of the case does not justify because the estimation itself does not have any basis and mere based on the assumption of the Assessing Officer, even otherwise maximum part of which already stands deleted by the Ld. CIT(A) in quantum proceedings.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 27.03.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:27.03.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) Shri Prem Pal Gandhi, Nawanshahar
- (2) The ACIT, Central Circle-II, Jalandhar
- (3) The CIT(A)-5, Ludhiana
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order