

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

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

ITA No. 2344/Del/2015

A.Y. 2003-04

&

ITA No. 2345/Del/2015

A.Y. 2004-05

Sh. Devi Das Garg G-15, Maharani Bagh New Delhi 110 065 PAN: AACPD7283Q	vs.	ACIT, Central Circle - 07 New Delhi 110 055
(Appellant)		(Respondent)

Appellant by	Sh. Sudesh Kumar Garg, Adv.
Respondent by	Sh. S.L. Anuragi, Sr.D.R.
Date of Hearing	30/05/2018
Date of Pronouncement	.31.05. 2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present appeals are filed by assessee against the order dated 16.02.2015 of the Ld. Commissioner of Income Tax (Appeals)-24, New Delhi pertaining to the Assessment Year (A.Y.) 2003-04 and 2004-05 on the following grounds.

ITA No. 2344/Del/2015, A.Y. 2003-04

“1. The Ld. CIT (A) has erred on facts and in law in dismissing the appeal of the appellant and confirming levy of penalty of Rs. 12,18,571/-.

2. The Ld. CIT (A) has erred in giving a finding of fact that no transaction of sale of shares was made at Kolkata Stock Exchange on the dates mentioned in the contract notes/ sale bills issued by the brokers.

3. The Ld. CIT (A) has erred in getting persuaded by high amount of capital gains made by the appellant in the shares of M/s Nageshwar Investment Limited and has further erred in ignoring the finding of the Hon'ble Tribunal that merely because the sale of shares fetched handsome price cannot be a reason to doubt the genuineness of the sale of the shares.

4. The Ld. CIT (A) has erred in not being able to appreciate the enquiry made by SEBI, and also the period to which the enquiry was related did not fall in the relevant period and has further erred in ignoring the fact that the appellant or the broker through whom the transactions were carried out were not subject matter of enquiry made by SEBI.

5. The Ld. CIT (A) has erred in holding that the facts of case of Sh. Mithilesh Kumar Tripathi, relied upon by the appellant, were distinguishable.

5. The Ld. CIT (A) has erred in not dealing with a single case and proposition of law coming out from those cases as mentioned in the written submissions filed by the appellant and has further erred in not relying upon any case law in support of his interpretation of the applicability of provision of section 271(l)(c) of the Income tax Act, 1961 to the facts of the appellant case.

The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.

2. Today before us assessee has preferred appeal for AYs 2003-04 and 2004-05 on identical grounds of appeal. For the sake of convenience, grounds of appeal for A.Y. 2003-04 are reproduced hereinabove and facts relating to A.Y. 2003-04 are being dealt with as under.

3. Brief facts of the case are as under.

Ld.A.O. imposed a penalty of Rs.12,18,571/- for A.Y. 2003-04 and Rs.16,00,142/- for A.Y. 2004-05 u/s 271(1)(c) of the Act.

Ld.AR submitted that order u/s 271(1)(c) of the Act was passed on 16.1.2014 imposing a penalty of Rs.12,18,571/-. The penalty

was imposed for the following additions which were confirmed by Ld.CIT(A) in his order dt. 20.3.2012.

Additions made on account of rejection of claim of capital gains on account of sale of shares of M/s Nageshwar Investment Ltd. for Rs.37,98,480/-.

Additions made on account of unverifiable bills etc. against agriculture income for Rs.70,000/- on estimated basis.

Ld.AR submitted that while imposing penalty Ld.AO has not dealt with necessary ingredients for imposing penalty. Ld.AO persuaded himself to impose penalty just because part of the quantum addition has been confirmed by Ld.CIT(A).

4. Aggrieved by A.O.'s order assessee preferred appeals before the ld.CIT(A).

5. At the outset Ld.AR submitted that quantum proceedings in these cases for the relevant AYs were decided by Co-Ordinate Bench of this Tribunal vide consolidated order dt. 19.10.2016, wherein assessee's appeals were allowed and department's appeal dismissed. He placed on record copy of order dt. 19.10.2016.

5.1. He further submitted that order of ITAT was subject matter of appeal before Hon'ble Delhi High Court which vide its order dated 8.5.2018 dismissed department's appeal. He placed on record order dt. 8.5.2018 passed by Hon'ble Delhi High Court along with consolidated order of this Tribunal in assessee's own case for AYs 2003-04 and 2004-05 passed in quantum appeal.

6. Ld.Sr.D.R. though supported the order of Ld.CIT(A) could not controvert the aforesaid submissions of Ld.AR.

7. We have perused the submissions advanced by both the sides in the light of the records placed before us.

8. It is observed that this Tribunal while deciding the quantum appeal held assessment u/s 153A of the Act as legal and quashed the same. While doing so, this Tribunal recorded that assessment u/s 153A was framed making various additions and were not tenable, as in the search operation, no materials were found which could empower A.O. to frame assessment u/s 153A of the Act for the years under consideration. This Tribunal while deciding so placed reliance upon *Hon'ble Delhi High Court* in case of *CIT vs. Kabul Chawla in ITA no.707/2014 dt. 28/08/2015*. Similar has been the observations of this Tribunal for A.Y. 2004-05, as in the quantum appeal assessment u/s 153A has been quashed by this Tribunal.

8.1. As the assessment itself has been quashed for A.Y. 2003-04 and 2004-05, all the additions made by Ld.A.O. for A.Ys under consideration automatically stands deleted. Therefore, penalty levied on such additions also deserves to be deleted. Accordingly grounds raised by assessee for A.Y. 2003-04 and 2004-05 stand allowed.

9. In the result appeals filed by the assessee for Assessment Years 2003-04 and 2004-05 stand allowed.

Order pronounced in the Open Court on 31st May, 2018.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

Dt. 31st May, 2018

*mv

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

ITA No.2344/Del/2015 A.Y.:2003-04 &
ITA No.2345/Del/2015 A.Y.:2004-05
Sh. Devi Das Garg Vs. ACIT, CC-07, New Delhi

S.No.	Details	Date	Initials	Designation
1	Draft dictated on Dragon			Sr. PS/PS
2	Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			