

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.5117/Del/2014
Assessment Year: 2005-06

Anand Kumar 513, Saket Colony, Muzaffarnagar-251001 PAN ANDPK0740K	Vs	ITO, Ward-1 (1) Muzaffarnagar
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. K. L. Aneja, Advocate
Respondent by	Sh. S. L. Anuragi, Sr. DR.

Date of hearing:	18/07/2018
Date of Pronouncement:	18/07/2018

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the assessee is directed against the order dated 29.11.2013 of the CIT(Appeals), Muzaffarnagar relating to A. Y. 2005-06.
2. This appeal was earlier dismissed by the Tribunal for non prosecution. Subsequently the Tribunal vide order dated 23.02.2018 in M.A. No.337/Del/2016 recalled its earlier order. Hence, this is a recalled matter.

3. There is a delay in filing of this appeal by 184 days. The Ld. Counsel for the assessee filed the condonation application explaining the reasons for delay which is due to the accident occurred to him. After considering the contents of the condonation application, the delay in filing of the appeal is condoned.

4. Levy of penalty of Rs.3,96,000/- u/s 271 (1) (c) by the Assessing Officer and upheld by the CIT (A) is the only issue raised by the assessee in the various grounds of appeal.

5. The Ld. Counsel for the assessee submitted that the Assessing Officer in the original order passed had made addition of Rs. 12,00,000/- on account of unexplained deposit in the bank account. The addition was upheld by the CIT(A). Subsequently penalty of Rs. 3,96,000/- was levied by the Assessing Officer which was also upheld by the CIT(A). He submitted that in the appeal filed by the assessee, the Tribunal vide order dated 30.10.2014 has set aside the issue to file of the Assessing Officer for de-novo examination and adjudication. The Assessing Officer in the order passed u/s143 (3) / 254 has sustained addition of Rs.2,50,000/- only out of Rs. 12,00,000/- made in the original order. On further appeal Ld. CIT(A) has reduced such addition to Rs.50,000/-. In these circumstances he has no objection if the matter is restored to the file of the Assessing Officer for afresh adjudication of the issue.

6. The Ld. DR on the other hand has no objection if the matter is restored to the file of the Assessing Officer for fresh adjudication.

7. After hearing both the sides I find penalty was levied u/s 271 (1) (c) of the IT Act, 1961 on account of addition of Rs. 12 lacs made by the Assessing Officer on account of unexplained of deposit in the bank account. I find when the matter travelled up to the Tribunal, the Tribunal in the quantum proceedings has restored the issue to the file of the Assessing

Officer. Under these circumstances I deem it proper to restore the issue to the file of the Assessing Officer for adjudication of the issue afresh in accordance with law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing i.e. on
18.07.2018.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

NEHA
Date:- 18.07.2018

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.07.2018
Date on which the typed draft is placed before the dictating Member	18.07.2018
Date on which the approved draft comes to the Sr.PS/PS	18.07.2018
Date on which the fair order is placed before the Dictating Member for Pronouncement	18.07.2018
Date on which the fair order comes back to the Sr. PS/ PS	18.07.2018
Date on which the final order is uploaded on the website of ITAT	18.07.2018
Date on which the file goes to the Bench Clerk	18.07.2018
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

