

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.1359 & 1360/Del/2018

Assessment Years : 2009-10 & 2010-11

Mamta Bakshi,
L-107, Kirti Nagar,
New Delhi – 110015.

Vs. DCIT,
Central Circle-17,
New Delhi.

PAN: AALPB6438L

(Appellant)

(Respondent)

Assessee By : Shri Anil Chopra, CA
Department By : Shri Atiq Ahmad, Sr. DR

Date of Hearing : 24.07.2018
Date of Pronouncement : 25.07.2018

ORDER

These two appeals filed by the assessee upholding the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') relate to the assessment years 2009-10 and 2010-11. Since both the appeals are based on similar facts and common grounds, I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The facts relating to assessment year 2009-10 are that the assessee, at the material time, was co-owner of the property L-107, Kirti Nagar, New Delhi along with Smt. Nirmal Malhotra. Such property was let out to Shri Taruna Bakshi, who is director of M/s D-Art Furniture System Pvt. Ltd. For the previous year relevant to assessment year 2009-10, the assessee declared rental income of Rs.1,20,000/- and similar amount was declared for the assessment year 2010-11 as well. The Assessing Officer required the assessee to produce the rent agreement and fair rental value. In the absence of any such rent agreement filed by the assessee, the Assessing Officer estimated fair rent at Rs.6 lac. After reducing the amount of rental income declared by the assessee at Rs.1,20,000/-, he made further additions of Rs.3,36,000/- after allowing statutory deduction, in respect of both the years under appeal. Penalty has been imposed with reference to this income, which came to be affirmed in the first appeal.

3. I have heard both the sides perused the relevant material on record. It is apparent from the facts recorded above that the assessee declared rental income at Rs.1,20,000/- which was enhanced by the Assessing Officer to Rs.6 lac simply on the basis of his estimate. There is nothing to show that he

assessee, in fact, received rental income of Rs.6 lac, but, declared at Rs.1,20,000/-. Thus it is a case in which addition has been made on estimate basis. It is a settled legal position that no penalty u/s 271(1)(c) can be imposed when income is determined on estimate basis.

4. The Hon'ble Delhi High Court in *CIT vs. Aero Traders Pvt. Ltd., (2010) 322 ITR 316 (Del)*, has held that no penalty u/s 271(1)(c) can be imposed when income is determined on estimate basis. Similar view has been taken by the Hon'ble P&H High Court in *Harigopal Singh vs. CIT (2002) 258 ITR 85 (P&H)* and the Hon'ble Gujarat High Court in *CIT vs. Subhash Trading Company, 221 ITR 110 (Guj)*. Under these circumstances, I am of the considered opinion that the Id. CIT(A) was not justified in sustaining the penalty on the basis of estimate. I, therefore, order to delete the penalty confirmed for both the years under consideration.

5. In the result, both the appeals are allowed.

The decision was pronounced in the open court on 25th July, 2018.

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 25th July, 2018.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.