

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1970/Del/2015  
Assessment Year: 2008-09

Arun Modern Public School, C/o- Arun Educational Society, D-1, Main Road, Brij Puri, Delhi	<b>Vs.</b>	Addl. CIT, Range-49, New Delhi
<b>PAN :AAATA4717C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Sameer Kapoor, CA
Respondent by	Shri Ravi Kant Gupta, Sr. DR

Date of hearing	30.07.2018
Date of pronouncement	30.07.2018

**ORDER**

**PER O.P. KANT, A.M.:**

The present appeal by the assessee is directed against the order of CIT(A)-41, New Delhi, dated 27.01.2015 pertaining to the assessment year 2008-09 in relation to penalty u/s 271C of the Income-tax Act, 1961 (in short 'the Act'), raising following grounds of appeal:

- 1. The learned Commissioner of Income Tax (Appeals)-41, New Delhi has erred in confirming the penalty of Rs.84,811/- levied by the Joint Commissioner, Range-49, New Delhi u/s 271C of the Income Tax Act.*

*During the proceedings jurisdiction/office of honourable Commissioner of Income Tax (Appeals)-41, New Delhi, was changed and the assessee has nor receive the notice for personal hearing due to which could not be able to represent the case before Commissioner of Income Tax (Appeal).*

*2. The appellant may be permitted to add, delete, amend or substitute all or any of the grounds of appeal at or before the date of hearing.*

**2.** Briefly stated facts of the case are that due to non-deduction of tax at source of Rs.84,811/- on salary paid by the assessee, order u/s 201(1)/201(A) of the Act was passed on 15.06.2007 holding the assessee-in-default. Accordingly, show cause notice dated 21.10.2010 & 04.04.2011 were issued u/s 271C of the Act for levy of penalty for non-deduction of tax at source. After taking into account submission of the assessee, the Additional Commissioner of Income Tax, Range-49, New Delhi, levied penalty of Rs.84,811/- vide order u/s 271C dated 25.04.2011. The assessee preferred appeal before Ld. CIT(A). Ld. CIT(A) noted that several notices have been issued to the assessee for hearing of the appeal. However, the assessee sought adjournment and did not submit any response to the statutory notices issued for disposal of the appeal. Ld. CIT(A) in the absence of any representation from the side of the assessee, dismissed the appeal of the assessee for non-prosecution. Hence, the appeal is before the ITAT.

**3.** We have heard both the parties and perused the findings of the authorities below. The Ld. AR submitted that the CIT(A) has not adjudicated the grounds of appeal and, therefore, the order of Ld. CIT(A) is required to be set aside for adjudicating the grounds of appeal raised before Ld. CIT(A) on merits.

**3.1** After considering rival submissions, we are of the view that the matter requires re-consideration at the level of Ld. CIT(A). According to Section 250(6) of the Act, Ld. CIT(A) is required to mention point for determination in the appellate order and

reasons for decision while disposing the appeal of the assessee. However, Ld. CIT(A) did not decide the appeal of the assessee on merit and without giving reasons for decision, dismissed the appeal of the assessee for non-prosecution. Thus, the order of Ld. CIT(A) cannot be sustained in law. Further, even if the assessee did not appear before Ld. CIT(A), he is required to pass the order on merits giving reasons for decision in the appellate order.

**4.** In view of the above discussion, since Ld. CIT(A) has not passed the reasoned order on merits, we set aside the impugned order and restore the appeal of the assessee to the file of Ld. CIT(A) with the direction to re-decide the appeal of the assessee on merits strictly as per law. Ld. CIT(A) shall pass the order on merit giving reasons for decision in the appellate order by giving reasonable & sufficient opportunity of being heard to the assessee and the AO.

**5.** In the result, the appeal of the assessee is allowed for statistical purposes.

The decision is pronounced in the open court on 30<sup>th</sup> July, 2018.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 30<sup>th</sup> July, 2018.

RK/-(D.T.D.)

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