

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.64/Ind/2015  
Assessment Year: 2009-10**

Shri Shasham Kothari E-31, Shankar nagar, Near Shivaji Nagar, Bhopal	<b>बनाम/ Vs.</b>	ACIT, 1(1), Bhopal
(Appellant)		(Revenue )
P.A. No. AGKPK6431D		

**ITA No.687/Ind/2016  
Assessment Year : 2009-10**

Shri Shasham Kothari E-31, Shankar nagar, Near Shivaji Nagar, Bhopal	<b>बनाम/ Vs.</b>	CIT(A)-31, New Delhi Camp Bhopal
(Appellant )		(Revenue)
P.A. No. AGKPK6431D		

Appellant by	Shri Yashvant Sharma CA
Revenue by	Shri K.G. Goyal
<b>Date of Hearing:</b>	<b>02.08.2018</b>
<b>Date of Pronouncement:</b>	<b>17 .08.2018</b>

**आदेश / O R D E R**

**PER MANISH BORAD, A.M.:**

These two appeals are filed at the instance of assessee.  
ITANO.64/Ind/2015 relates to quantum addition and

ITANo.687/Ind/2016 relates to penalty levied u/s 271(1)(c) of the Act and pertains to A.Y. 2009-10 and are directed against the order of Ld. Commissioner of Income Tax(Appeals), Bhopal, (in short 'CIT(A)'), vide order dated 20.11.2014 & 04.12.2015 which is arising out of the order u/s 143(3) & 271(1)(c) of the Income Tax Act 1961(hereinafter referred to as the 'Act') framed on 15.11.2011 & 28.05.2012 by ACIT, Bhopal respectively.

The assessee has raised following grounds of appeal in ITANo.64/Ind/2015:

*"That, on the facts and in the circumstances of the case, the order of Hon'ble CIT(A) is bad in law untenable and is liable to be quashed.*

*2. That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not condoning the delay and it not entertaining appeal for adjudication.*

*3. That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that no appeal lies against agreed addition, ignoring the circumstances explained by the assessee for the so-called agreed addition.*

*4. That, on facts and in the circumstances of the case, the Ld. AO erred in disallowing and Hon'ble CIT(A) erred in maintaining disallowance of Rs.8, 00,000/- on account of Labour Charges.*

The assessee has raised following grounds of appeal in ITANo.687/Ind/2016:

*“That on the facts and in the circumstances of the case, the order of Hon'ble CIT(A) is bad in law.*

*That on the facts and in the circumstances of the case, the Ld. AO erred in levying and Ld. CIT(A) erred in maintaining penalty of Rs.3,00,000/- u/s 271(1)(c).”*

2. Briefly stated facts as culled out on the records are that the assessee is an individual engaged in civil construction business. Income of Rs.19,98,210/- declared in return of income filed on 30.09.2009. The case was selected for scrutiny. Necessary notices u/s 143(2) & 143(1) of the Act were served upon the assessee and details were filed by the assessee. During the course of assessment proceedings, the Ld. AO while examining the details of labour expenses came to a conclusion that there is a possibility of bogus expenditure and accordingly estimated a lump sum disallowance of labour charge of Rs. 8,00,000/-. Income assessed at Rs. 27,98,210/-.

3. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) which was time barred. The Ld. CIT(A) did not condone the delay in filing the appeal. As far as the merit is concerned, the ld. CIT(A) confirmed the disallowance observing that the assessee himself has agreed for the disallowance of labour expenses of Rs.8,00,000/- and therefore, no appeal lies against the impugned disallowance.

4. Subsequently penalty proceedings were also initiated u/s 271(1)(c) of the Act on the alleged disallowance of labour expenses

and penalty of Rs.3,00,000/- was levied by the Ld. AO vide order dated 28.12.2012 u/s 271(1)(c) of the Act.

5. Aggrieved assessee is in appeal before the Tribunal against the impugned disallowance of Rs.8,00,000/- and the penalty confirmed by the Ld. CIT(A). At the outset the ld. counsel for the assessee submitted that the assessee was not offered proper opportunity to submit the necessary information and to place relevant documentary evidences as raised in support of genuineness of labour expenses and if an opportunity is provided, the documents can be verified by the Ld. AO. He, requested for setting aside all the issues on both these appeals to the file of Ld. AO. No objection was raised by the Ld. DR on this plea of the Ld. counsel for the assessee.

6. We have heard rival contentions and perused the material available on record before us. In these two appeals of the issues relating to quantum addition for disallowance of labour expenses of Rs.8,00,000/- and penalty of Rs.3,00,000/- levied u/s 271(1)(c) of the Act confirmed by the Ld. CIT(A). We accept the plea of the Ld. counsel for the assessee which goes un-rebutted by the Ld. DR and in the interest of justice set aside the issue relating to quantum addition to the file of Ld. AO for de novo adjudication.

7. As regards the penalty levied u/s 271(1)(c) of the Act which is calculated per se the quantum addition, the same also needs to be set aside to the file of Ld. AO as fate of levying penalty will depend on the addition if any to be made by the Ld. AO in the set aside proceedings.

We, accordingly, set aside all the issues of both these appeals to the file of Ld. AO for de novo adjudication. Needless to mention that a proper opportunity of being heard be given to the Assessee.

8. In the result, both appeals of the Assessee are allowed for statistical purposes.

*Order was pronounced in the open court on 17 .08.2018.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 17/ 08/2018

*Patel. P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Private Secretary/DDO, Indore**