IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCHES 'A', CHANDIGARH

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA,ACCOUNTANT MEMBER

ITA No. 72/CHD/2018
Assessment Year: 2012-13

Shri Chitranjan Aggarwal, Plot No. 41, Industrial Area, Phase-1, Chandigarh. PAN : AANPA0943R	V	The ITO, Ward 2(1), Chandigarh.
(Appellant)		(Respondent)

Appellant by : Shri Vineet Krishan
Respondent by : Shri Ankur Alya, JCIT (DR)

Date of hearing : 07.08.2018
Date of Pronouncement : 04.09.2018

ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 19.12.2017 of CIT(A)-1 Chandigarh pertaining to the 2012-13 assessment year on the following grounds :

1. *That the order passed under section 250(6) by the Hon'ble Commissioner of Income Tax (Appeals)-1.Chandigarh in Appeal No. 169/15-16 dated 19.12.2017 is contrary to law and facts of the case.*
2. *That in the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) gravelly erred in upholding the penalty of Rs. 10,958/-levied by the Id. Assessing Officer under section 271(1) (c) of the Income Tax Act, 1961.*

2. The ld. AR inviting attention to the assessment order dated 13.01.2015 submitted that the assessee had declared an income of Rs. 29,48,520/-. It was submitted that in the year under consideration, assessee was Proprietor of Kuldeep Prakash & Sons who is distributor of Finolex Industries Ltd in PVC Resin and C&F of MRF Corp- Ltd at 41, Indl, Area, Phase-1. Chandigarh. The assessee is also proprietor of Truck Supplier Corporation which is running a Petrol pump at Chandigarh. Reading from the assessment order, it was submitted that certain discrepancies vis-a-vis 26AS and assessee's P&L account in the reimbursement of freight and cartage were noticed which amounted to Rs. 35,462/-. It was submitted that the assessee was required to

reconcile the same and considering the return filed, the assessee accepted the said addition and as a result of this acceptance, it was his submission, penalty proceedings u/s 271(1)(c) of the Act were initiated and penalty to the tune of Rs. 10,958/- was imposed merely on the ground that the assessee has agreed to the addition. It was his submission, as a result of this, the CIT(A) has also confirmed the penalty. In the said background, it was his prayer that the decision of the assessee at the assessment stage not to contest the discrepancies as the amount was very small now in hindsight has resulted in the assessee facing the penalty proceedings. It was his submission that when the total freight of the assessee is considered and the taxable income of the assessee, the minor discrepancy accepted for not wasting time by contesting minor addition by itself cannot be a ground for levy of penalty. Referring to the assessment order, it was submitted that the explanation offered in the penalty proceedings that the addition was agreed to not because reconciliation was not possible but only on the ground that the amount was very small, the said explanation cannot outrightly discarded without considering the facts.

3. The ld. Sr.DR relies upon the order.

4. We have heard the rival submissions and perused the material on record. It is seen that the CIT(A) while affirming the order has been guided by the legal position as understood by him as noted in para 7.5 of his order namely ; *"once concealment has been accepted the assessee cannot turn around and give another explanation during the penalty proceedings. During the penalty proceedings the AO has considered the explanation given by the assessee and on sound reasoning has not accepted the same."* We are of the view that the aforesaid legal proposition understood by the CIT(A) is in conflict with the well settled legal position namely that the assessment proceedings and penalty proceedings are separate and distinct and merely because the addition has been accepted or confirmed in the quantum proceedings by itself, cannot lead to the levy of penalty automatically. The explanation offered in the penalty proceedings has to be separately considered in the light of the legal requirements to support the levy of penalty. In the peculiar facts and circumstances of the present case considering the returned income of the assessee, we find that the decision to accept the addition as a result of discrepancies qua 26AS form, looking at the returned income of Rs.

29,48,520/-and the discrepancy noticed and accepted to the tune of Rs. 35,462/- does not invite penal action. As far as the stand of the assessee is concerned, the discrepancy, if not addressed, is sufficient ground to confirm the addition but as far as penalty proceedings are concerned, the submissions and facts need to be appreciated. On considering the facts and submissions, we are of the view that in the peculiar facts of the present case, penalty u/s 271(1)(c) of the Act was not attracted. Accordingly, the order is directed to be quashed. Said order was pronounced in the Open Court at the time of hearing itself.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 04.09. 2018.

Sd/-	Sd/-
(ANNAPURNA GUPTA)	**(DIVA SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

'Poonam'
Copy to:

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

Asstt. Registrar
ITAT,Chandigarh