

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R.KUMAR, AM

आयकर अपील सं./ITA No. 853/CHD/2017

निर्धारण वर्ष / Assessment Year : 2007-08

Smt. Baljeet Kaur Sekhon, Charitable Trust, SCO 52-54, Sector 17-C, Chandigarh.	बनाम VS	The DCIT,(Exemption), Circle 6(1), Mohali.
स्थायी लेखा सं./PAN No: ABXPS6329L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh

राजस्व की ओर से/ Revenue by : Shri Kultej Singh Bains, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 10.07.2018

उद्घोषणा की तारीख/Date of Pronouncement : 03.10.2018

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 17.03.2017 of CIT(A)-2 Gurgaon pertaining to 2007-8 assessment year wherein the penalty imposed by the AO and confirmed by the CIT(A) is challenged on the grounds that the CIT(A) has failed to appreciate the facts and circumstances and the order passed is *against the principles of law and natural justice* and also is assailed to be *wrong on facts and law*.

2. However, apart from the original grounds, the ld. AR invited attention to application dated 24.09.2017 placed on record by the assessee praying for admission of the following two additional grounds :

1. *That the Ld. Assessing Officer has erred in law in failing to mention whether notice under section 271(1) (c) issued was for concealment of income or for furnishing inaccurate particulars of income and as such penalty imposed and upheld by Commissioner of Income Tax(Appeals) in pursuance of an invalid notice is illegal, arbitrary & unjustified.*

2. *That the Assessing Officer while framing the assessment had mentioned in the body of the assessment order that the penalty is initiated for furnishing inaccurate particulars of income while the penalty has been imposed for concealment of particulars of income and as such imposition of penalty on a different charge renders the penalty order so upheld by the Ld. Commissioner of Income Tax (Appeals) illegal, arbitrary and unjustified.*

3. Referring to the grounds, attention was invited to notice issued u/s 271(1)(c) of the Act dated 08.06.2010 stating that the specific ground on which penalty notice is issued, has not been scored off. It was submitted on a query that the said issue has not been addressed

by the CIT(A) as the specific ground was not raised before the said authority. In the circumstances it was his limited prayer that admitting the ground, issue may be restored to the CIT(A) to pass an order in terms of the settled legal principles after verifying the facts and hearing the assessee.

4. The Id. Sr.DR considering the ground raised stated that he would have no objection to the raising of the additional ground. Similarly, the prayer for remand to the CIT(A) is also not opposed as the department would also like to see from its record the specific notice issued to the assessee by the AO.

5. We have heard the rival submissions and perused the material on record. A perusal of the record shows that out of the three additions made by the AO, finally the addition of Rs. 20 lacs on account of omission to disclose sale consideration was upheld by the ITAT. The penalty order has been passed taking into consideration the said addition. It is seen that the validity of the penalty order has been questioned by the assessee by way of additional ground raised in the present appeal. Since the finding thereon is depending upon the specific notice issued by the AO, it is deemed appropriate considering the prayer of the parties before the Bench to restore the issue back to the file of the CIT(A) with a direction to call for the record and pass an order taking into consideration the specific notice issued. Thus only after deciding the jurisdictional issue, the CIT(A), if need be, may pass an order on merits also. Since the jurisdictional issue has to be first decided, the impugned order is set aside in toto with the direction to pass an order in accordance with law addressing the additional grounds agitated before the ITAT. Said order was pronounced in the Open Court at the time of hearing itself. Said order was pronounced in the Open Court at the time of hearing itself.

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

Order pronounced in the Open Court on 03.10.2018.

Sd/-

(डा. बी.आर.आर. कुमार)
(Dr. B.R.R. KUMAR)

लेखा सदस्य/ Accountant Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(दिवा सिंह)
(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar
ITAT, Chandigarh.