

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 4369/Del/2015**

**AY: 2012-13**

Smt. Kamlesh Garg 28, Saini Enclave New Delhi 110 092  PAN: AAOPG3513C	<b>Vs.</b>	Dy.CIT, Central Circle 03 New Delhi
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**(Appellant)**

**(Respondent)**

**Assessee by :** Sh. C.S.Anand, Adv.

**Department by :** Sh. Surender Pal, Sr. D.R.

**Date of Hearing :** 08/11/2018

**Date of Pronouncement:** 28/11/2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

The present penalty appeal has been filed by assessee against order dated 13/05/15 passed by Ld.CIT(A)-25, New Delhi for Assessment Year 2012-13 on following grounds of appeal:

*“That on the facts of the case and under the law, the Ld.CIT(A) has erred in confirming the penalty of Rs.1,62,226/-, which was levied by the Ld.AO u/s 271(1)(c) in consequence to the addition of Rs.5,25,000/- made while presuming that the assessee had paid such amount for purchase of lift, freight & installation out of unexplained cash.”*

*‘NOTE: The assessee craves leave to amend/modify the afore mentioned ground of appeal and/or to raise additional ground(s) of appeal, at any time prior to or during the course of appellate proceedings.’*

Assessee had also raised following additional ground which has been admitted by this Tribunal by way of an interim order passed on 07/08/18:

*“That initiation of penalty proceedings u/s 271(1)(c) for A.Y. 2012-13 in the case of the assessee (where search & seizure operation u/s 132 was carried out on 15.06.2011) was misconceived, and thus the penalty order passed by the Ld.AO on 29.09.2014 u/s 271(1)(c) is liable to be quashed/annulled.”*

**2. Brief facts of the case are as under:**

A search and seizure operation under section 132 (1) of the Act, 1961 was carried out on 15/06/11 at business and residential premises of assessee. Case of assessee was centralised and notice under section 142 (1) of the Act was issued, calling for furnishing return of income. In response to the same, assessee filed letter dated 11/12/12 along with the copy of original return of income, wherein income of Rs.11,58,326/-was declared. Thereafter notice under section 143 (2)/142 (1) along with questionnaire was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld. AO and filed various details as called for.

**3.** Ld.AO observed that assessee declared income under the head ‘Salary’, from M/s Sam India Builtwell Pvt.Ltd., M/s Sachin Enterprises and M/s. S.C. Industries Ltd. Assessee also had ‘Income from Other Sources’. During course of search and seizure operation conducted at corporate office, various documents were seized belonging to assessee, wherein there was invoice issued to assessee by M/s Esha Elevators Pvt. Ltd., for one unit elevator costing Rs.3,30,041/-, on which excise duty @ 10.30% and VAT @ 14% has been charged, totalling to

Rs.4,15,000/-. Another document : page No. 21, was also seized, wherein calculation of total payment made for purchase of elevator was made. Ld.AO on perusal of page 21 was of opinion that expenses to install lift have been made partially by way of cheque and partially in cash. It was held by Ld.AO that sum of Rs.4,65,000/- was to be paid in cash for purchase of lift, wherein a sum of Rs.2,15,000/- was due for payment. Assessee was asked to explain source of cash. Dissatisfied with explanation provided by assessee, Ld.AO made addition of Rs.4,65,000/- from undisclosed sources, and initiated penalty under section 271 (1) (c) of the Act.

**4.** Additional ground raised by assessee is in respect of validity of initiation of proceedings under section 271 (1) (c) of the Act, more particularly when search and seizure action has taken place in case of assessee.

**5.** We have perused submissions advanced by both sides.

**6.** Admittedly search and seizure action was carried out on 15/06/11. On perusal of penalty provisions under Income Tax Act, there is specific section 271 AAA, for levy of penalty, where search has been initiated on or after 01/06/07 but before 01/07/12.

**6.1.** As date of search in present case falls between 01/06/07 to 01/07/12, in our considered opinion, Ld. A.O. should have initiated penalty under section 271AAA instead of section 271 (1) (c) of the Act.

**6.2.** We accordingly allow additional ground raised by assessee, thereby holding penalty proceedings initiated to be not in accordance with law. We thus quash penalty proceedings.

7. As we have quashed penalty proceedings, ground raised by assessee on merits becomes purely academic in nature.

**8. In the result appeal filed by assessee stands allowed.**

**Order pronounced in the open court on 28/11/2018.**

Sd/-

**( PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dt. 28<sup>th</sup> November, 2018

- Gmv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

	Date
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	