

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 576/CHD/2018

निर्धारण वर्ष / Assessment Year : 2010-11

Sh. Subhash Chopra, H.No. 64/2, Adarsh Nagar, Chopra Tower, Derabassi	बनाम	M/s Addl. CIT , Range VI, Mohali
स्थायी लेखा सं./PAN NO: AARPC2683C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Pankaj Bhalla, CA

राजस्व की ओर से/ Revenue by : Sh. Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 21.08.2018

उदघोषणा की तारीख/Date of Pronouncement : 15.11. 2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 26.3.2018 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as 'CIT(A)'] agitating the confirmation of the penalty levied by the Assessing officer u/s 271D of the Income-tax Act, 1961 (in short 'the Act'). .

2. At the outset, the Ld. Counsel for the assessee has invited our attention to ground No.2 of the appeal, wherein, the assessee has taken a plea that the Ld. CIT(A) has failed to adjudicate various legal grounds taken by the assessee before him. The Ld. counsel has further invited our attention to the impugned order of the CIT(A) to show that the Ld. CIT(A) has adjudicated the original grounds taken by the assessee before him

which were defective as ground No.1 was repeated in ground No.2. The Ld. counsel has further invited our attention to page 14 of the paper book, which is copy of the letter dated 28.9.2017 along with which the assessee had submitted revised grounds of appeal in Form No. 35 and it has been requested that the additional / revised / legal grounds raised have significant bearing on the tax liability of the assessee and, therefore, they need to be admitted and adjudicated. The Ld. counsel has further invited our attention to page 16 of the paper book, which is copy of the grounds of appeal taken by the assessee before the Ld. CIT(A). The said grounds are reproduced as under:-

- 1. That the Ld. Additional Commissioner of Income Tax erred in imposing penalty of Rs. 2,95,000/- u/s 271D of the Income Tax Act, 1961 without any base and reasons thereof.*
- 2. That the penalty levied u/s 271D is in contravention to the expressed provisions of section 271D as it is imposed by Authority not being Authority as envisage u/s 271D. That the Additional Commissioner of Income Tax exceeded his jurisdiction to imposed penalty u/s 271D as not being competent Authority to do so.*
- 3. That, without prejudice to Ground No. 2, the penalty levied u/s 271D is void abnatio for the reason that initiation of penalty proceeding was not done during pendency of assessment in contravention to the settled legal position.*
- 4. That, without prejudice to Ground No. 2 and 3, the penalty levied u/s 271D is void abnatio for the reason that initiation of penalty proceeding was not done within reasonable time which is in itself illegal and non-maintainable.*
- 5. That the Ld. Additional Commissioner of Income Tax erred in law and facts in imposing penalty u/s 271D without appreciating that genuine transaction between family members is not covered under mischief u/s 269SS of the Income Tax Act.*
- 6. That the Ld. Additional Commissioner of Income Tax failed to adjudicate the detailed reply furnished by the Counsel judiciously and failed to pass a speaking order as to why business expediency is not*

proved as to why the situation is not covered under reasonable cause as defined u/s 273B of the Income Tax Act, 1961 and as to how the facts of this case are different from the citation reported by the Counsel.

7. *That the penalty levied by the Ld. Additional Commissioner of Income Tax u/s 271D is without appreciating the fact that the assessee acted in a bonafide manner.*
8. *That the penalty levied u/s 271D is over and above the agreed addition of Rs. 25,000/- made during the course of assessment proceeding to cover up of any revenue leakage. This is in contravention to the settled legal position.*
9. *That the Appellant craves, leave to vary, alter or add any grounds of appeal”*

3. A perusal of the order of the CIT(A), however, reveals that the Ld. CIT(A) has failed to take note of the additional / legal / revised grounds taken by the assessee during pendency of the appeal before him. In view of this, we find force in the contention of the Ld. Counsel for the assessee that the matter be remanded back to the file of the CIT(A) for adjudication upon the additional / legal / revised grounds, as noted above.

4. In view of this, the impugned order of the CIT(A) is set aside and the matter is restored to the file of the CIT(A) with a direction to pass a fresh order on merits taking into consideration the aforesaid additional / legal / revised grounds taken by the assessee.

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

Order pronounced in the Open Court on 15.11.2018

Sd/-
(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 15.11.2018

“आर.के.”

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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar