

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5614/Del./2018  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.5615/Del./2018  
(ASSESSMENT YEAR : 2009-10)**

Shri Gajendra Kumar, vs. ITO, Ward 1(1)(2),  
C/o Shri Dinesh Kumar Tyagi, Meerut.  
425/3, Jagriti Vihar, Garh Road,  
Meerut.

**(PAN : FAJPK0622N)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None  
REVENUE BY : Shri S.S. Rana, CIT DR

Date of Hearing : 10.01.2019

Date of Order : 24.01.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Shri Gajender Kumar (hereinafter referred to as 'the assessee') by filing the present appeals i.e. in ITA No.5614/Del/2018, sought to set aside the impugned order dated

06.06.2018 and in ITA No.5615/Del/2018 sought to set aside the impugned order dated 19.06.2018 by confirming the penalty order dated 12.05.2017 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), by Id. CIT (Appeals), Meerut qua the assessment year 2009-10 on the identical grounds inter alia that :-

*“1. That the Learned Commissioner of Income Tax (Appeals) has dismiss the Appeal in-limine by saying that the appeal is filed beyond stipulated time as per law.*

*2. That the Learned Commissioner of Income Tax (Appeals) has not provided the opportunity of bearing heard.*

*3. That the Appellant is a agriculturist and sold the agriculture land having area of 1.12188 hectare for a consideration of Rs.1586000/- on 29-12-2008*

*4. That the Appellant has no other occupation and is in search of purchasing a agriculture land and deposit some of the cash out of the sale proceeds of agriculture land in his bank account in Syndicate bank bearing account no 88092200026251 in kaul branch. The appellant deposit Rs.778657.50 on 7-2-2009 and Rs.250000/- on 19-3-2009.*

*5. That the Agricultural land which was sold by assessee on 29-12-2008 was situated beyond 8 krns from the Municipal limits of Meerut, Hence it does not attract Capital gain tax as per provisions of Income Tax Act 1961.*

*6. That the learned Commissioner of Income Tax (Appeals) have-not heard the Appellant and dismiss the appeal in-limine*

*7. That the there is problem with the address of the appellant and notices and orders were either not delivered at all or if delivered they were delivered late. The address of the appellant on which the notices and orders were sent was Village Rajpura post Atrada, Meerut. There is another village in Meerut by the same name Rajpura on the Mawana Road and due to this problem of two villages having same name the notices and orders may not have been delivered.*

*8. This fact of non delivery of notices is itself admitted by the learned commissioner of Income Tax (Appeals) that notice dated 5-2-2016 was returned back on 13-2-2016.*

9. *That the appellant reserved the right to add, amends, alter and or delete any of the grounds of appeal*

10. *That the Affidavit is produced herewith that the assessee have not received the notice" and assessment orders at his address.*

11. *That the Penalty of Rs.243600/- has been imposed after completion of assessment. Penalty cannot be imposed after completion of assessment by the assessing officer and during, appeal was dismissed in-limine. The same fact was has held by Hon'ble Allahabad High Court in the case of CIT Vs Shadiram Bal Mukund (1972) 84 ITR 183 (All.) and this decision of high court was admitted by Commissioner of Income Tax (Appeals) in the case of Mohd Murtaza Ali Vs. Income Tax officer Ward 1(4) Meerut and the copy of decision of Commissioner of Income Tax (Appeals) is provided herewith."*

### **ITA NO.5614/DEL/2018**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessment in this case was framed under section 144/147 of the Income-tax Act, 1961 (for short 'the Act') by issuing of the notice u/s 148 of the Act on 16.03.2016. Then notices u/s 142(1) dated 16.05.2016 and 08.08.2016 have been issued and served but, on failure of the assessee to appear before the AO, he proceeded to make the addition of Rs.10,28,658/- on account of cash deposit in the saving bank account no.88092200026251 maintained with Syndicate Bank, Meerut during FY 2008-09.

3. Assessee carried the matter by way of an appeal before the Id. CIT (Appeals) who has dismissed the appeal in limine on the

ground that the contention of the assessee that he has not received any notice by the AO, is not sustainable because all the notices were sent to him on the same address on which order u/s 271(1)(c) dated 02.06.2017 was served. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

5. We have heard the Id. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Bare perusal of the assessment order shows that notice u/s 148 of the Act was issued on 16.03.2016 and notices u/s 142(1) were issued on 16.05.2016 and 08.08.2016 but due to non-appearance of the assessee, AO made the addition on account of unexplained cash deposit of Rs.10,28,658/- in his saving bank account maintained with Syndicate Bank. From the assessment order, it is also not clear as to what were the reasons, if at all recorded by the AO, for reopening the assessment. Only from the fact that the AO stated to have issued the notice u/s 148 of the Act

one can make out that the assessment order has been framed u/s 147 of the Act. Otherwise, reasons recorded have not been mentioned in the assessment order nor in the order passed by the Id. CIT (A). All these facts go to prove that the assessment has been framed in haste without providing adequate opportunity of being heard to the assessee. Even the Id. CIT (A) has not provided adequate opportunity of being heard to the assessee rather relied upon unsubstantiated fact that when order u/s 271(1)(c) dated 02.06.2017 was received by the assessee, he cannot be believed that the notice u/s 148 of the Act and notices sent u/s 142 (1) have not been received by the assessee. In these circumstances, we are of the considered view that to meet with the ends of justice, assessment order passed by the AO and impugned order passed by the Id. CIT (A) are required to be set aside. Hence case is remanded back to the AO to decide afresh after providing an opportunity of being heard to the assessee. Consequently, the aforesaid appeal filed by the assessee is allowed for statistical purposes.

**ITA NO.5615/DEL/2018**

7. On the basis of assessment framed u/s 144/147, AO initiated the penalty proceedings u/s 271(1)(c) of the Act. On failure of the assessee to appear and defend the penalty proceedings, AO

proceeded to levy the penalty to the tune of Rs.2,43,600/- u/s 271(1)(c) of the Act for concealment of income.

8. However, we are of the considered view that since the assessment order framed u/s 144/147 of the Act on the basis of which penalty proceedings were initiated has been set aside to the file of AO to decide afresh after providing an opportunity of being heard to the assessee, the penalty proceedings being consequential in nature are also liable to be set aside to the AO to decide accordingly after framing new assessment order. Consequently, the aforesaid appeal filed by the assessee is hereby allowed.

9. Resultantly, both the aforesaid appeals filed by the assessee are allowed for statistical purposes.

**Order pronounced in open court on this 24<sup>th</sup> day of January, 2019.**

**Sd/-  
(N.S. SAINI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 24<sup>th</sup> day of January, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.