

**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.5645/Del./2018  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.5646/Del./2018  
(ASSESSMENT YEAR : 2009-10)**

Shri Dinesh Kumar,  
864, Mohalla Kabil Gate,  
Mawana, Meerut.

vs. ITO, Ward 1 (2),  
Meerut.

**(PAN : AWDPK3071G)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ravinder Aggarwal, FCA  
Shri Rohit Aggarwal, FCA  
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 Dinesh Kumar (hereinafter referred to as 'the assessee') by filing the present appeals i.e. in ITA No.5645/Del/2018, sought to set aside the impugned order dated

19.06.2018 and in ITA No.5646/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 grounds inter alia that :-

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*1. On the facts and circumstances of the case, the L'd Assessing Officer has passed order U/S 147/144 without jurisdiction and the L'd Commissioner of Income Tax (Appeals) has erred in sustaining the same mutatis mutandis.*

*2. That the L'd Lower Authorities have erred in assuming that the notice U/S 148 must have been served on the assessee despite categorical denial in this regard by the assessee.*

*3. That while passing the assessment order under section 147/144 , the L'd Assessing Officer has erred in not making any enquiry or collecting evidence in support of the addition made which non doing vitiates the very assessment U/S 144, especially when the assessee has categorically denied service of notices U/S 142(1).*

*4. That the L'd Commissioner of Income Tax ( Appeals) , has erred in not being able to appreciate the family structure and the power of purse of an illiterate farmer family and has thereby not only disbelieved affidavit of Sh Sohan Beer but has labeled it “Factually incorrect and unreliable” without any cogent reasoning or evidence to the contrary.*

*5. That the L'd CIT(Appeal) has grossly erred in sustain the addition of Rs.15,62,200/- made by the AO. Observations made, inferences drawn and findings recorded in sustain the same are arbitrary, illegal and merely based on non appreciation of family structure, customs and traditions existent in rustic families.”*

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*1. The L'd Assessing officer has erred in imposing penalty U/S 271(1) ( C) for Rs.4,23,700/- for alleged concealment of income. Observations made, inferences drawn and findings recorded in this regard are untenable on facts and in law.*

2. *That no order allegedly passed U/S 147/144 was served on the assessee nor any notice dated 22-12-2016 was served on the assessee and hence the question of giving any explanation for the cash deposited in bank account did not arise what to say of a satisfactory explanation.*

3. *That the L'd Assessing officer has erred in simply relying on his observations and findings in the quantum assessment whereas the impugned proceedings being quasi criminal in nature should have been addressed independently.”*

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

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is an agriculturist and Assessing Officer noticed that he has deposited a cash amount of Rs.15,62,200/- in his bank account during the year under assessment and consequently, the case was reopened under section 147 of the Income-tax Act, 1961 (for short 'the Act') by issuing notice u/s 148 of the Act on 16.03.2016. On failure of the assessee to appear before the AO, during the assessment proceedings, the AO proceeded to frame assessment ex-parte and made addition of Rs.15,62,200/- on account of cash deposited in Syndicate Bank, Murana and Rs.969/- being the interest credited in his account maintained with Syndicate Bank.

4. Assessee carried the matter by way of an appeal before the Id. CIT (Appeals) who has confirmed the addition by dismissing

the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties 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. It was categoric case of the assessee before the Id. CIT (A) that the amount of Rs.14,03,200/- deposited in the bank account of the assessee belongs to Sohanbeer Singh who has executed two sale deeds dated 12.01.2009 for a sale consideration of Rs.6,56,000/-, available at page 14 of the paper book, and another sale deed dated 12.01.2009 for a sum of Rs.2,75,000/-, available at page 30 of the paper book (total consideration Rs.9,31,000/-) and the said amount has been transferred to bank account of Sohanbeer Singh by way of demand drafts issued on 22.01.2009, as is evident from bank statement of Sohanbeer Singh, available at pages 12 of the paper book.

7. The Id. DR for the Revenue by relying upon the order passed by the AO as well as Id. CIT (A) contended that when undisputedly Chand Tari, relative of Sohanbeer Singh has sold the land for Rs.9,31,000/- then from where the remaining amount has been deposited in the account of assessee and he has further stated that

when Sohanbeer Singh himself is maintaining the account, there was no ground for depositing the said amount in the name of the assessee.

8. However, to repel the aforesaid arguments of Id. DR, the Id. AR for the assessee contended that the amount of Rs.14,03,200/- was taken as sale consideration but the sale deed was got executed on the circle rate and Sohanbeer Singh was having bank account at Village Kinoni and the cash amount was deposited because of security reasons as it was difficult to take cash amount to a distant place at that time.

9. Contention of the assessee appears to be prima facie sustainable. Moreover, Sohanbeer Singh has filed the affidavit explaining all these facts, which is available at page 7 of the paper book, but the same has not been believed by the Id. CIT (A) nor he has preferred to get Sohanbeer Singh examined by calling a remand report.

10. Even perusal of the assessment order shows that there is not an iota of material mentioned in the assessment order as to on which date notice u/s 148 of the Act was served upon the assessee and even date of service of notice u/s 142 (1) of the Act on the assessee has not been mentioned by the AO who has rather framed the assessment in haste. All these facts go to prove that adequate

opportunity of being heard has not been provided to the assessee by the AO and the documents placed on file before the Id. CIT (A) have also not been examined by calling a remand report rather the Id. CIT (A) has dismissed the appeal on the basis of conjectures and surmises without going into the merits of the documents relied upon by the assessee. In these circumstances, we are of the considered view that to meet with the ends of justice, the assessee is required to be given adequate opportunity of being heard. Consequently, assessment order is set aside and the file is remanded back to the AO to decide afresh after providing an opportunity of being heard to the assessee. So, the aforesaid appeal filed by the assessee is hereby allowed for statistical purposes.

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11. 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.4,23,700/- u/s 271(1)(c) of the Act for concealment of income.

12. 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.

10. 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.**