

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.:- 4312/Del/2018
Assessment Year: 2010-11

Vidit Jain, 26, Friends Colony, New Delhi – 110 065	Vs.	ITO, Ward -19(3) New Delhi Pan AALPJ7086
(Appellant)		(Respondent)

Assessee by:	Shri Ved Jain, Advocate
Department by :	Shri S.L. Anuragi Sr. DR
Date of Hearing	15/11/2018
Date of pronouncement	28/01/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 15.5.2018, passed by Ld. CIT (Appeals)-7, New Delhi in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2010-11.

2. The assessee is aggrieved by levy of penalty of Rs. 8,25,671/- u/s 271(1)(c) on account of cash deposits in the bank account added u/s 68 for sum of Rs. 30,72,236/-. The facts in brief are that during the course of the assessment proceedings, AO on perusal of bank statement and the cash flow chart submitted by the assessee, noted that assessee has deposited cash of Rs. 32,87,690/- in his bank account. In response to the show cause notice by the AO, the assessee

submitted that the cash has been deposited out of: i) opening balance of Rs. 2,15,454/-; ii) cash withdrawals on different occasion; iii) rental income; and iv) gifts received from relatives during the year. It was further stated that assessee has received total gift of Rs. 7,70,000/- from his family and relatives and major gift has come from his in laws, Shri Subhash Chandra Sanghai and Ms. Kiran Sanghai who have was gifted Rs. 2,51,000/- each, on the occasion of birthday ceremony of his son. In support, assessee has also filed copy of gift deed and confirmation from the donors. It was further submitted that these two close relatives were Nepali Citizens and belong to renowned business family of Nepal and in support of the creditworthiness they have filed various documents including their bank statement and copies of their passport. However, Ld. AO rejected the assessee's explanation and added the entire amount of cash deposit u/s 68. From the appellate stage, part relief was allowed of Rs. 2,15,454/- and balance amount of Rs. 30,72,236/- was confirmed. Now penalty has been levied by the AO of Rs. 8,25,671/- on account of the additions confirmed in the quantum proceedings.

3. The assessee's explanation before the AO and Ld. CIT(A) was that, when assessee was blessed with son being his first child on 1.3.2010 he had received gifts from his in laws and other close relatives. The details of gift received in cash at the time of birth of his son alongwith confirmation and gift deed were as under: -

Name of the Donor	Amount Received (Rs.)	Relationship with assessee	Documents Filed
Sh. Subhash Chand	2,51,000	Father in law	Gift deed and other supporting evidence filed to establish the credit worthiness of the Donor

Smt. Kiran Sanghai	2,51,000	Mother-in-law	Gift deed and other supporting evidence filed to establish the credit worthiness of the Donor
Smt. Kavita Aggarwal	52,000	Wife's sister	Gift Confirmation
Mr. Anuj Aggarwal	51,000	Wife's brother in law	Gift Confirmation
Mr. Vinod Jain PAN AAAPJ3888P	21,000	Father's elder brother	Gift Confirmation
Mrs. Anju Jain	21,000	Father's elder brother wife	Gift Confirmation
Mr. Vijay Kumar Jain	21,000	Father's elder brother	Gift Confirmation
Mrs. Rashmi Jain	21,000	Father's elder brothers wife	Gift Confirmation
Mr. Raj Kumar Jain PAN : AAIPJ3260D	11,000	Father's elder brother	Gift Confirmation
Mrs. Asha Jain PAN ADPPJ9863N	11,000	Father's elder brother's wife	Gift Confirmation
Mrs. Shruti Jain	11,000	Father's younger brother's wife	Gift Confirmation
Mrs. Nirmala Bajoria	11,000	Father's sister	Gift Confirmation
Staff and friends	38,000	(Below Rs. 1000 each)	Gift Confirmation
Total	7,70,000		

The said amount of Rs. 7,70,000/- was deposited in the bank account. Apart from that, it was submitted that sum of Rs. 25,17,690/- was deposited on various dates out of opening cash in hand and cash withdrawals made from bank account aggregating to Rs. 25,75,000/- plus rental income received in cash. The narration of cash deposits and withdrawals has been incorporated in the impugned appellate order. Regarding gift also, the assessee submitted all the evidences of

Shri Subhash Chandra Sanghai who had withdrawn huge money from their bank account out of which he has given the said amount and also given the source of the money in his bank account alongwith the gift deed and confirmation. The assessee detailed submission have been incorporated in the impugned orders. However, the Ld. CIT(A) has confirmed the penalty solely on the ground that in the quantum proceedings all the documents have been examined by the Ld. CIT(A) and has confirmed the addition and the case laws relied upon by the AR are distinguishable.

4. Ld. Counsel for the assessee, reiterated the same submissions and also drew our attention to fund flow statement given before the authorities below. Apart from that, he submitted that the notice issued u/s 271(1)(c) read with section 274 is bad in law, because it does not specify the limb under which penalty was levied and in support he relied upon the judgment of Hon'ble Karnataka High Court in the case of CIT vs Manjunath Cotton Ginning Factory, reported in 359 ITR 565 and also catena of other judgements.

5. On the other hand, Ld. DR strongly relied upon the order of the AO and Ld. CIT(A) and submitted that in the quantum proceedings each and every explanation of the assessee has been examined and thereafter same has been confirmed. Therefore, penalty has rightly been confirmed by the Ld. CIT(A).

6. After considering the rival submission and on perusal of the relevant finding given in the impugned orders as well as material referred to before us, it is seen that penalty has been levied for furnishing of inaccurate particulars of income on account of cash deposits in the bank account which has been alleged to be unexplained and same has been confirmed in the quantum proceedings. Though findings given in the quantum proceedings do

have a probative value in the penalty proceedings, however, the said finding alone is not conclusive for the penalty proceedings so as to hold that assessee is guilty of furnishing of inaccurate particulars of income. The assessee based on same material or any fresh evidence may point that the explanation of the assessee is bonafide. Here in this case, assessee had pointed out that the cash deposits in the bank account were either out of gifts aggregating to Rs. 7,70,000/- received from relatives at the time of birth of his son or out cash available with assessee from withdrawals made. In support assessee has filed gift deeds and confirmation from all the donors who are close relatives. The major gift has given from assessee's father-in-law and mother-in-law who are Nepali citizens and in support they have also filed documentary evidences to show their creditworthiness and also withdrawals made by them from the bank account in Nepal and for the other relatives in their respective confirmations they have given source of income and has also confirmed the giving of gift on the occasion of birth of assessee's son. There is no material to rebut these evidences. In the quantum proceedings addition has been confirmed by holding that, since the whole transaction is in cash, therefore, verification of the same is difficult. Such a reason in wake of the evidences filed by the assessee it cannot be held that assessee's explanation is not substantiated or has been found to be false. Regarding balance cash deposits, the same has been stated to be out of huge withdrawals made from the bank account from time to time and also from opening cash in hand. All these explanations have not been found to be false rather additions have been made on the ground that there is no evidence that the cash withdrawals have been re-deposited or construes the source for deposit. This reasoning may have some significance in the quantum proceedings, however, in the penalty proceedings, AO has to rebut that assessee's explanation is

either not tenable or is contrary to the material brought on record. Simply because in the quantum proceedings, explanation has not been accepted that does not lead to inference that penalty has to be levied especially when assessee has given the entire details and evidences for the cash deposits. Accordingly, in these facts and circumstances, I find that penalty u/s 271(1)(c) cannot be levied for furnishing of inaccurate particulars of income. Accordingly, penalty is directed to be deleted. Other contention raised by the Ld. Counsel is treated as academic.

7. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 28th January, 2019.

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 28/01/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi