

filing the present appeals i.e. in ITA No.3874/Del/2017, sought to set aside the impugned order dated 05.06.2017 and in ITA No.3875/Del/2017 sought to set aside the impugned order dated 06.06.2017 by confirming the penalty order dated 26.09.2016 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 2013-14 on the grounds inter alia that :-

“ITA NO.3874/DEL/2017

1. That donation received from Ex Members of the board and others of Rs.6,22,250/- cannot be treated as anonymous donation, when complete details of donation was provided to CIT(A). Therefore, the AO as well as CIT(A) is in error in assessing the donation anonymous and taxed U/s 115BBC of LT. Act @ 30%.

2. That as per AO. Order, he allowed only salary to staff but other charitable activities he totally ignored therefore, the assessment made by AO. by disallowing expenses except salary to staff is against the principal of natural justice. Particularly, when the trust is registered under Society Act as well as U/s 12A of LT. Act and CIT(A) ignored the same.

ITA NO.3875/DEL/2017

1. That the penalty of Rs.1,62,000/- imposed by A.O. and confirmed by CIT(A) is bad in law because the A.O. as well as CIT(A) has not allowed the benefit of section 11 (5) of I.T. Act. Hence, imposition of penalty and confirmed the same is bad in law.

2. That the A.O. in his penalty order has not bring anything except the various expression in assessment order however, penalty proceeding are different from

the assessment proceeding and A.O. also ignored that the assessment was not served upon the assessee. Hence, penalty imposed by A.o. without providing proper and reasonable opportunity is bad in law and CIT(A) also in error in confirming the same.

3. That the Ld. CIT(A) has not consider the written reply of the assessee as well as various case laws quoted by the assessee. Therefore, confirmation of penalty is against the facts and against the principle of natural justice.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee society registered under Society Registration Act has also been registered under section 12AA of the Income-tax Act, 1961 (for short ‘the Act’). Assessing Officer noticing donation of Rs.6,22,250/- from 92 persons called upon the assessee to furnish details of donors with names, addresses, PAN and bank details to prove creditworthiness of the donors which the assessee has failed to produce and consequently proceeded to treat the donation of Rs.5,22,250/- as anonymous donation under section 115BBC of the Act and charged the same to tax. AO has also sought to initiate penalty proceedings under section 271(1)(c) of the Act against the assessee on the ground that the assessee has concealed the income by furnishing inaccurate particulars of income.

4. Assessee carried the matter by way of appeals before the ld. CIT (Appeals) who has dismissed both the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.
5. We have heard the ld. 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. For the sake of brevity, the findings returned by the ld. CIT (A) are extracted as under :-

“ I have gone through the facts of the case and the submissions of the Ld.AR and considered the legal aspect that arises out of the facts of the case. In the assessment order the AO has stated that despite several opportunities, the concerned AR never produced the Books of account and vouchers. Ultimately the AR during assessment produced a copy of the FIR dated 4.03.2016 filed in the police station that have fallen anywhere. It is to be noted that the said assessment has been framed under section 143(3) of the Act. Now in the Appeal proceedings the Ld. AR has filed certain documents alongwith written submissions which have been reproduced on page 4 & 5 of this order however no application under Rule 46A of the I.T Rules has been filed alongwith these submissions. Also, no evidence has been filed that the papers now being filed were filed before the AO. Under these circumstances I am not in a position to admit the evidences filed now in the absence of either the details that were filed before the AO or the new evidence which should have come with a proper application under Rule 46A, especially from the Ld. Counsel who has a vast experience of dealing with such matters in Appeal. But the law in the

matter has not been followed, for reasons best known to the Ld. Counsel. Under the circumstances and considering the legal position I am not in a position to interfere in the assessment order framed by the A.O.”

7. Bare perusal of the findings returned by the Id. CIT (A) show that when undisputedly no document has been produced by the assessee during the assessment proceedings before the AO particularly FIR dated 04.03.2006 to prove the fact that the assessee has lost the documents somewhere and the assessee has sought to produce those documents during appellate proceedings without moving an application under Rule 46 of the Income-tax Rules, 1962 and consequently, Id. CIT (A) has not provided adequate opportunity to the assessee to prove those documents.

8. We are of the considered view that assessee should not be made to suffer due to negligence or inefficiency on the part of the is Authorized Representative who has not moved an application under Rule 46A of the Rules rather sought to prove the documents just like that. So, in these circumstances, assessee is entitled for adequate opportunity of producing the documents and we deem it fit in the interest of justice to set aside the assessment order to the file of Assessing Officer who shall decide afresh after providing an opportunity of being heard to the assessee. Consequently, appeal in ITA No.3874/Del/2017 is allowed for statistical purposes.

9. Since penalty proceedings initiated under section 271(1)(c) and consequent penalty levied on the assessee is consequential to the assessment order which has since been set aside, penalty proceedings are also set aside to the AO who will decide afresh after passing a fresh assessment order. Consequently, appeal in ITA No.3875/Del/2017 filed by the assessee is allowed.

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

Order pronounced in open court on this 29th day of January, 2019.

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

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

**Dated the 29th day of January, 2019
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**