

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

BEFORE SHRI N.K.SAINI, VICE PRESIDENT AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA NOs. 583 to 587/Jodh/2018

(ASSESSMENT YEARS -2005-2006 & 2006-07, 2010-11 & 2011-12, 2013-14)

Sh Murlidhar Sharma, 221 Shyam Nagar Scheme, Pal Link Road, Jodhpur	Vs	The DCIT, Central Circle-2, Jodhpur
(Appellant)		(Respondent)
PAN: AOLPS6649J		

ITA No. 588/Jodh/2018

(ASSESSMENT YEAR -2008-09)

Smt. Jiya Devi Sharma, 221 Shyam Nagar Scheme, Pal Link Road, Jodhpur	Vs	The DCIT, Central Circle-2, Jodhpur
(Appellant)		(Respondent)
PAN: AWDPS1278H		

Revenue By	Sh. P.K. Singi, DR
Assessee By	Shri Amit Kothari, CA
Date of hearing	01.05.2019
Date of Pronouncement	01.05.2019

ORDER

Per N.K. SAINI, V.P. :

These appeals by the assesseees are directed against the separate orders each dated 15.11.2018 of the CIT(A)-2, Udaipur.

2. Since the issue involved is common in these appeals which were heard together, so these are being disposed off by this common order for the sake of convenience and brevity.

3. The only grievance of the assesseees in these appeals relate to the sustenance of penalty levied by the Assessing Officer u/s 271 (1) (c) of the Income Tax Act, 1961 [in short' the Act'].

4. The facts of the case in brief are that a search and seizure operation u/s 132 of the Act was carried out at the residential premises of the assessee and the family members on 15.12.2009 and 16.12.2009. During the course of search, certain incriminating documents / loose appears / books of account and various assets were found and seized. Thereafter, notices u/s 153A of the Act were issued and in response the assesseees furnished the returns of income including the surrendered income. The Assessing Officer, however, made various additions in the income declared by the assesseees but the additions made by the Assessing Officer were directed to be deleted by the ITAT vide order dt 26.11.2013. The Assessing Officer noted that there was difference in the total income declared by the assessee u/s 139(1) of the Act and income

declared u/s 153A of the Act. He considered the difference as concealed income of the assessee and levied penalty u/s 271 (1) (c) of the Act.

5. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who passed the impugned orders ex-parte by stating that the notices were issued to the assessee but none attended on the dates fixed for hearing. The Ld. CIT(A) sustained the penalty levied by the Assessing Officer. Now the assessee is in appeal.

6. The Ld. counsel for the assessee submitted that the notices issued by the CIT(A) were not served upon the assessee and no opportunity for hearing was given, therefore, Ld. CIT(A) was not justified in sustaining the penalty levied by the Assessing Officer u/s 271(1) (c) of the Act..

7. In his rival submissions, the Ld. Sr. DR supported the orders of the authorities below.

8. We have considered the submissions of both the parties and perused the material available on record. In the present case, it is noticed that the Ld. CIT(A) in para 3 of the impugned orders has mentioned that various notices were issued to the assessee by post, in response to which, the assessee either failed to appear or sought the adjournments. It is also mentioned that the last notice was issued on 2.11.2018 for hearing on 14.11.2018 but none attended. In the present case it is not clear as to whether the notices issued

by the Ld. CIT(A) were served upon by the assesseees. It is well settled that nobody should be condemned unheard as per the maxim “*audi alteram partem*”. We, therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside these cases back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assesseees.

9. In the result, the appeals of the assesseees are allowed for statistical purposes.

(Order Pronounced in the Court on 01.05.2019)

Sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated : 01.05.2019

“आर.के.”

Sd/-
(N.K. SAINI)
Vice President

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order
सहायकपंजीकार/ Assistant Registrar

