आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य

BEFORE: Sh. SANJAY GARG, JUDICIAL MEMBER & DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 82/Chd/2018

निर्धारण वर्ष / Assessment Years : 2010-11

M/s Ajay Kumar Sood Engineers & Contractors, Sanjay Sadan, Chotta Shimla (H.P.)	बनाम	The Dy. CIT Central Circle-II, Chandigarh
स्थायी लेखा सं./PAN NO: AAKFA4648J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Sudhir Sehgal

राजस्व की ओर से/ Revenue by : Smt. Chandrakanta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 28/02/2019

उदघोषणा की तारीख/Date of Pronouncement : 02/05/2019

आदेश/Order

PER DR. B.R.R. KUMAR, A.M:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A)-3, Gurgaon dt. 30/11/2017.

2. In the present appeal Assessee has raised the following grounds:

1. That the Ld. CIT(A) has erred in dismissing the appeal of the assessee for levy of penalty under section 271(1)(c) and also enhancing the penalty by Rs. 25,44,500/-.

2. That the Ld. CIT(A) has grossly erred in not considering the reply filed by the assessee with regard to enhancement notice and, as such, the enhancement as made by the Ld. CIT(A) is against the legal and factual circumstances of the case.

3. That the enhancement made by the CIT(A) is totally void abinitio and deserves to be set aside, being against the provisions of law.

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

3. Brief facts of the case are that a search and seizure action under section 132(1) of Income Tax Act,1961 has been conducted on 08/10/2010 on the assessee. The return has been filed under section 139 of the Income Tax Act,1961 on 12/10/2010 declaring a total income of Rs. 1,84,91,090/- which consists of Rs. 75,00,000/- as undisclosed income. The assessment was completed making a further addition of Rs. 21,85,140/- based on the seized material. The addition made by the Assessing Officer has been deleted by the ITAT and hence no penalty on this amount is leviable. However, the Ld. CIT(A)

has levied(enhanced) penalty on the amount of Rs. 75,00,000/- which has been declared as undisclosed income during the search proceedings and duly declared in the return of income on two grounds:

a) That the surrendered income was not apparently disclosed to the department by the due date of filing of return for the year under consideration which tantamount to concealment of income on which penalty is leviable.

b) Strongly relying on the judgment in the case of Prasanna Dugar that penalty is leviable even if the assessee voluntarily disclosed a sum subsequent to search and offered that sum to tax.

4. We find based on the records that the due date of filing of returns of income for the A.Y. 2010-11 has been extended from 30/09/2010 to 15/10/2010 by the order F.No. 225/72/2010/IT(A-II), dt. 27/09/2010 . Thus the observation that the assessee has not filed return in due time as held by the Ld. CIT(A) is not correct on the facts of the case. Further in the case of Prasanna Dogar relied by the Ld. CIT(A) the assessee has not declared the surrendered income in the return and the return was also filed after the due date whereas in the instant case the assessee has filed the return in the due date and also declared the surrendered income in the return filed and hence the provisions of Section 271(1)(c) are not applicable to the instant case. Hence keeping in view the facts on record which contravene the observation of the Ld. CIT(A) we hereby direct the penalty levied be obliterated.

5. As a result, appeal of the Assesee is allowed.

Sd/-	Sd/-
संजय गर्ग	**डा. बी.आर.आर, कुमार,**
(SANJAY GARG)	**(DR. B.R.R. KUMAR)**
न्यायिक सदस्य/ Judicial Member	**लेखा सदस्य/ Accountant Member**

AG
Date: 02/05/2019

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. The Appellant , 2 The Respondent , 3. CIT, 4. The CIT(A), 5. DR, ITAT, CHANDIGARH, 6. Guard File