

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "A": NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 367/Del/2016

A.Y. : 2008-09

COMMITTED TRADING PVT. LIMITED, Vs. ITO, WARD 3(3)
SHOP NO. 319, 3RD FLOOR, NEW DELHI
VARDHMAN FORTUNE MALL,
G.T. KARNAL ROAD,
DELHI - 110 033
(PAN: AACCC4073A)

(Appellant)

(Respondent)

Assessee by : Sh. Rohit Jain, Adv. & Ms. Shaily
Gupta, CA
Department by : Smt. Naina Soin Kapil, Sr. DR.

ORDER

PER H.S. SIDHU, JM

This appeal filed by the Assessee is directed against the Order dated 21.10.2015 of the Ld. Commissioner of Income Tax (Appeals)-2, New Delhi pertaining to assessment year 2008-09.

2. The grounds of appeal raised in the assessee's appeal read as under:-

1. *On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in upholding the levy of penalty of 47,43,320/- u/s 271(l)(c) of the Income tax Act,1961 merely on the basis of presumptions and suspicions,*

ignoring the various judicial pronouncements and material on record.

2. *On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in upholding the levy of penalty of 47,43,320/- u/s 271(l)(c) of the Income tax Act,1961 on the ground that no convincing/satisfactory explanation has been filed by the assessee and that the assessee has failed to prove that there was no fraud or neglect in filing the return.*

That the above grounds of appeal are without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.

3. Assessee has also filed separate Application for admission of additional grounds in Appeal in which the assessee has stated that in view of the settled decision in the case of NTPC 229 ITR 383 (SC), (legal ground can be raised for first time in collateral and second round also). He further stated that since the issue is purely legal based on facts already on record, the assessee may be allowed to raise the following additional ground in the interest of natural justice:-

"3. That on facts and circumstances of the case and in law, the impugned penalty of Rs. 47,43,320/- levied under section 271(1)© of the Act is without jurisdiction, illegal and bad in law.

3.1 That the AO erred on facts and in law in not specifying whether the penalty is levied for concealment of income or for furnishing of inaccurate particulars of income, and interchangeably applying the two concepts while imposing penalty under section 271(1)© of the Act.”

3.1 Ld. Counsel of the Assessee requested that keeping in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC 229 ITR 383 (SC) (Supra), the additional grounds raised by the assessee in all the three appeals may be admitted and decided first.

4. On the contrary, Ld. DR strongly opposed the admission of additional grounds (legal) raised by the assessee.

5. After hearing both the parties as well as perusing the additional grounds alongwith the orders passed by the Revenue Authorities, we are of the considered view that in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC Limited 229 ITR 383 (Supra), the additional grounds raised by the assessee are purely legal ground and did not require fresh facts which is to be investigated and goes to the root of the matter. In the interest of justice, we admit the aforesaid additional grounds. We find that since these additional ground were not raised before the Ld. CIT(A), hence, the same requires adjudication by the Ld. CIT(A), therefore, in the interest of justice, we remit back the aforesaid additional grounds to the file of the Ld. CIT(A) with the directions to decide the same

afresh under the law, after giving adequate opportunity of being heard to the assessee.

6. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced on 10/05/2019.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 10/05/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches