

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.3162/Del./2015
Assessment Year 2009-2010

Smt. Burmah Devi, W/o. Gokul Chand, C/o.M.L. Gulati, Advocate, Moti Chowk, Rewari. PAN APZPD7437E	vs.,	The Income Tax Officer, Ward-2, Aayakar Bhawan, Model Town, Rewari.
(Appellant)		(Respondent)

For Assessee :	Shri Gautam Jain, Advocate.
For Revenue :	Ms. Nidhi Srivastava, CIT-DR

Date of Hearing :	20.05.2019
Date of Pronouncement :	03.06.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Rohtak, Dated 25.03.2015, for the A.Y. 2009-2010, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

1.1. Earlier, this appeal were dismissed for default which is restored by allowing M.A. of the assessee. Appeal of assessee was fixed for hearing on merits.

2. In this case, A.O. passed the assessment order under section 143(3) dated 28.12.2011, determining the income of assessee at Rs.90,73,603/- as against returned income of Rs.4,75,900/-. The A.O. made three additions in the assessment order. The A.O. vide separate Order levied the penalty under section 271(1)(c) of the I.T. Act, 1961.

3. Learned Counsel for the Assessee submitted that assessee challenged the quantum addition against the Order of the Ld. CIT(A) dated 04.12.2012 before ITAT, Delhi A-Bench in ITA.No.512/Del./2013 for the A.Y. 2009-2010, which have been decided by the Tribunal vide Order dated 29.01.2016 and the assessment order have been set aside to the file of A.O. with a direction to pass the assessment order denovo. Copy of the Order is placed on record, which fact is also not disputed by the Ld. D.R.

4. After considering the rival submissions, we are of the view that penalty is not leviable at this stage. Since the entire assessment order have been restored to the file of A.O. with a direction to pass the assessment order denovo by the Tribunal, therefore, penalty is not leviable at this stage because no foundation is left for levy of the penalty. In view of the above, we set aside the Orders of the authorities below and cancel the penalty. However, A.O. is at liberty to initiate the penalty proceedings after passing the assessment order afresh as per Law, if so advised. Appeal of Assessee is allowed.

5. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd June, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.