

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 5716/Del/2015  
(Assessment Year: 2012-13)**

Gaurav Garg, 152, New Gandhi Nagar, Ghaziabad.	Vs.	Commissioner of Income Tax (Appeals), Ghaziabad.
<b>PAN No:</b> AGEPG5300K		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : None  
**Revenue by** : Shri Surender Pal, Sr. DR

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals, ["Ld. CIT(A)", for short], Ghaziabad, dated 10.07.2015 for Assessment Year 2012-13, on the following ground:

*"That the Learned Commissioner of Income Tax (Appeal) law as well as on facts on the case in sustaining the Penalty amounting to Rs. 1179516/- of I. Tax At which ought not to have been sustained by the Learned Commissioner of Income Tax (Appeal) Ghaziabad."*

(2) Assessment Order U/s 143(3) read with Section 153A of Income Tax Act, 1961 ("IT Act", for short) was passed on 18.02.2014 in which addition of Rs. 30,00,000/- was made U/s 69A of IT Act and further addition of Rs. 11,87,129/- was made U/s 68 of I.T. Act. The relevant portion of the Assessment Order is reproduced as under:

*"During the year he had to invest in the new showroom also and has also given net loan of Rs. 11,00,000/- approx. to Shri Gaurav Garg. It is also important to note that sales are shown to be much more in Dec. 11 & Jan.2012 than the months of December,2010, January,2011 and Dec.2012, Jan.2013. On being asked Shri Ravindra Garg stated that this was due to marriage season during period Dec.2011 to Jan.2012. This explanation is also not tenable as marriage season comes in every year. The comparative sales next year during these months are lesser. Moreover, Shri Ravinder Garg did not produce books of account and other details as called for by notice u/s 131 of I.T. Act, 1961 dated 31.01.2014.*

*In view of the above, explanation in respect of source of cash is not found to be satisfactory, the sum is added u/s 69A of I.T.Act,1961.*

Addition : Rs. 30,00,000/-

*During assessment proceedings, vide notice u/s 142(1) dated 6.8.2013 the assessee was required to state the source of draft of Rs. 20,00,000/- dated 05.01.2012. Vide reply dated 10.10.13, the assessee explained that the said draft was made consisted of repayment from M/s Deepali Jewellers amounting to Rs. 20.50 lacs. However, from the account of Shri Gaurav Garg in the books of account of Shri Ravindra Garg Prop. Deepali Jewellers shows that on 04.01.2012 to 05.01.2012, Shri Gaurav Garg was to receive a net amount of Rs. 8,62,871/- only from Shri Ravinder Garg. However, Shri Ravinder Garg gave Rs. 20,50,000/- to Shri Gaurav Garg on 4th and 5th January,2012. This means Rs. 20,50,000/- - Rs. 8,62,871/- = 11,87,129/- was loan from Shri Ravinder Garg to Shri Gaurav Garg. As the assessee has not been able to prove the capacity of Shri Ravinder Garg as stated above, this amount of Rs. 11,87,129/- is also added to the income of the assessee u/s 68 of I.T. Act, 1961 as unexplained cash credit.*

Addition: 11,87,129/-

(3) Vide appellate order dated 16.10.2014, the Ld. CIT(A) deleted the aforesaid addition of Rs. 11,87,129/-; but confirmed the aforesaid addition of Rs. 30,00,000/-. The relevant portion of the order of Ld. CIT(A) is reproduced as under:

*“5.1 The **first addition** relates to addition of Rs. 30,00,000/- on account of cash found in possession of assessee by the Static Surveillance Team during general Assembly elections in the state of UP on 5/1/2012. This amount was later requisitioned by the Income Tax Department u/s 132A. In the explanation in the statement u/s 13A the assessee stated that the said sum was out of the sale proceeds of his jewellery shops. Thus at the first instance the assessee never stated that the said sum was a gift from his father Shri Ravindra Garg. This first statement about the source and nature of this amount seized from assessee is of paramount importance in this case.*

*After the cash was requisitioned u/s 132A the assessee changed his stand stating that this sum was a gift from his father out of sale proceeds of his jewellery shop. As far as the purpose of his carrying the said amount is concerned, the same is not relevant here. The assessee has also filed an affidavit before me on 16/10/2014 from the prospective seller of the impugned property Smt Sunanda Govil to the effect that she had demanded a draft of Rs. 20 Lacs and cash of Rs. 30 lacs from Shri Gaurav Garg for sale of her property. This evidence is neither admissible u/r 46A nor is material to decision in the matter. Therefore this is nothing but an after-thought and a concocted fanciful story to defraud the revenue.*

*The AO has rightly held that the assessee's father would be having a negative capital if this claim of alleged gift is accepted. The AO has cogently brought out that in order to explain sources of the alleged gifts assessee's father has enhanced his sales in the month of Dec 11 and Jan 12. This is nothing but a colourable device on part of assessee and his father. More so, because the books of account, from which such sales could be verified, were not produced before the AO in response to summons u/s 131 dated 31.1.2014. Thus the capacity of his father too is not proved.*

*It would be relevant to note here that the AO has invoked provisions of section 69A, the assessee being in possession of unaccounted money. But the assessee explaining such cash as gift from his father, the case laws relevant to section 68 as regards genuineness of the claim and creditworthiness of the alleged gift and the donor are equally relevant to the case at hand. Therefore a discussion on genuineness and creditworthiness albeit w.r.t section 68 would be -relevant here too and would not be out of place.*

(i) *Though the Assessing Officers, often, acts on confirmatory letters as evidence, the onus does not get discharged merely by such confirmatory letters as found in **CIT Vs. United Commercial and Industrial Co. (Pvt.) Ltd. (1991) 187ITR 596 (Cal)**,*

(ii) *In the case of **Kamal Motors v. CIT [2003] 131 Taxman 155 (Raj.)**, it was held that the responsibility is on the assessee to discharge the onus that the cash creditor is a man of means to allow the cash credit.*

(iii) *The burden to prove the source of receipt is in respect of each entry as held in the case of **CIT v. R.S. Rathore [1995] 212 ITR 390 (Raj.)**,*

(iv) *On the issue of burden of proof the Hon. Calcutta High Court in **CIT vs. Precision Finance Pvt. Ltd. (1994) 208 ITR 465 (Ca 1)** laid down that the assessee is expected to establish:-*

1. *Identity of his creditors;*
2. *Capacity of creditors to advance money; and*
3. *Genuineness of transaction.*

*As to the issue of genuineness of transaction, it was further held in the above*

*decision that the transaction is not genuine, simply because some, out of many, of the transactions are by cheque. Conversely, it is not open for the Assessing officer to add token amount merely for the purpose of making the returned income into a round figure. Where certain sum of money claimed by the assessee to have been borrowed from certain persons, it is for the assessee to prove, by cogent and proper evidence, that they are the genuine borrowings for the reason that the facts are exclusively within the assessee's knowledge.*

(v) *In case of CIT v/s NR Portfolio Pvt. Ltd. ( Delhi) ITA NOs. 134/2012 Order dt 21/12/2012 following the case of (A. Govindarajulu Mudaliar 34 ITR 807) It has been held that the concept of 'Shifting onus" does not mean that once certain facts are provided, the assessee's duties are over. If on verification, the AO cannot contact the share applicants, or the information becomes unverifiable, the onus shifts back to the assessee. At that stage, if it falters, the consequence may well be an addition u/s 68*

(vi) *In Shankar Ghose v ITO [1985] 23 TTJ (Cal.) 20 the assessee failed to prove the capacity of the person from whom he had allegedly taken loan. Further the assessee could not explain the need for the loan and the manner in which the loan amount was spent. The creditor issued two letters demanding repayment but did nothing on non compliance therewith.- such letters did not therefore carry any conviction about the explanation of the assessee. Loan amount was rightly held as assessee's own undisclosed income.*

(vii) *In the case of Sumati Dayal 214 ITR 801(SC) it has been held that, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted, can be used against him by holding that it is a*

*receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.*

*In view of facts of the case and above legal position, the assessee's case fails both on grounds of genuineness of transaction and creditworthiness of his father. Thus, the appellant has failed to explain satisfactorily the cash find in his possession. The addition made u/s 69 is justified. **The relevant grounds of appeal are rejected and the addition is confirmed.***

4.2 *The second addition relates to the addition of Ks. I 187129 in view of draft of Rs. 20.50 lac found in his possession. It is incontrovertible that the assessee had made this draft from his bank account. The source is shown to be receipts from his father through bank. The AO has made the addition stating that the assessee was debtor of only Rs.862871 and therefore the father could have given only this amount to assessee. This argument of AO is fallacious. On facts and circumstances of the case, merely because the assessee was a debtor of Rs.862871 the father could not have given him Rs. 20.50 lacs is not tenable. The transaction in my considered view is genuine on facts and to the extent of this amount even creditworthiness too is reasonably proved. Therefore this addition is deleted. Ground no. 5 is allowed."*

(4) The Assessing Officer ("AO", for short) vide order dated 19.12.2014, levied penalty amounting to Rs. 15,49,120/- under Section 271(1)(c) of I.T. Act, in respect of the aforesaid addition of Rs. 30,00,000/-, upheld by the Ld. CIT(A). The assessee filed appeal against the levy of penalty, before the Ld. CIT(A). Vide order dated 10.07.2015 in appeal no. 20/295/2014-15/GZB, upheld the levy of penalty U/s 271(1)(c) of IT Act, amounting to Rs. 11,79,516/-. The relevant portion of the order of the Ld. CIT(A) dated 10.07.2015 is reproduced as under:

*"2. The penalty order in this case is reproduced as under:-*

*In this case assessment was completed u/s 143(3) on 18.02.2014 determining assessee's income at Rs. 45,78,670/- against returned income of Rs. 3,91,540/- Income was computed as under:*

<i>Income declared</i>	<i>Rs. 3915407-</i>
<i>Additions on account of</i>	
<i>(1)Unexplained income Unexplained cash credit</i>	<i>Rs. 3000000/-</i>
<i>(2)Unexplained cash credit</i>	<i><u>Rs 1187129/-</u>    <u>Rs. 4187129/-</u></i>
<i>Taxable Income</i>	<i>Rs. 4678669/-</i>

*The assessee is engaged in job-work pertaining to jewellery and the business qualifies u/s 44AD of the I.T. Act, 1961. Apart from this the assessee is having income 'from house property, In this case cash of Rs. 30 lacs was found and taken into the custody by the SHO, Police Statibn-Muradnagar, District Ghaziabad during General Assembly Elections-2012 of Uttar Pradesh and in turn requisitioned u/s 132A of the I.T. Act, 1961 in terms of directions of Election Commission of India.*

*During the course of statement recorded on oath on 06.01.2012 by the DDIT(Inv.)-I, Ghaziabad the assessee in his statement stated that he was carrying cash for being delivered to Dr, Santosh Kumar- Gupta,- Modinagari Ghaziabad against purchase- of land at Mohan Nagar, Ghaziabad. During the course of assessment proceedings he was, further asked to explain as why he did not carry books of account and documentary evidence when the cash of Rs. 30 lacs was found despite clear directives of Election Commission of India. In reply to this the assessee has declared that the source of cash of Rs, 30 lacs is from sale of jewellery of his shops and about the bank draft amounting to Rs. 20 lacs, he stated that he had purchased it through his bank account. He never stated in his statement recorded by the DDIT(Inv.)-I, Ghaziabad dated that the amount of cash of Rs. 30 lacs was a gift from his father. It was only on 26.08.2013 he stated to have received a gift of. Rs. 30 laps from his father Shri Ravinder Garg.*

*On verification of genuineness of gift and creditworthiness of donor i.e Shri Ravinder Garg it was perused by the AO that 'the donor does not have the capacity to give such a big amount of gift as he has income, of Rs 5 lacs per annum and his capital account shows that on giving this alleged gift, the capital balance turned in defidit. On the basis of the above findings, the AO has added an amount of Rs. 30 lacs u/s 69 of I.T. Act and added to the income of the assessee.*

*The-assessee was required to state the source of draft of Rs. 20 lacs dated 05.01.2012. In his reply the assessee explained that the said draft was made out of repayment from M/s Deepali Jewellers amounting, to Rs.' 20.50 lacs. On verification of bank statement and transactions recorded in books of accounts of M/s Deepali Jewellers, it was gathered by the AO that out of Rs. 20.50 lacs only Rs. .8,62,871/- was due on account of unsecured loans repayment to the assessee and that Rs. 11,87,129/- represented the unsecured loans taken*

from M/s Deepali Jewellers which was reflected in the Audited Balance sheet of the said firm. On the basis of above findings the AO has added Rs. 11,87,129/- u/s 68 of the I.T. Act to the income of the assessee as unexplained cash credit.

Aggrieved with the order of the AO, the assessee filed an appeal before CIT(A), on who vide his order Appeal No. 585/2013-14/GZE3/185 dated 16.10.2014 partly allowed the appeal of the assessee. On the point of addition of-Rs. 30 lacs, the Ld. CIT(A), in his order, has clearly stated that the statement of the assessee that the sum of Rs. 30 lacs was a gift from his father out of sale proceeds of his jewellery shop is nothing but an after-thought and a concocted fanciful story to defraud the revenue because at the first instance i.e. in the statement u/s 132A recorded by DDIT(Inv.)-I, Ghaziabad the assessee had never stated that the amount of cash of Rs. 30 lacs was a gift from his father. It was only on 26.08.2013 that the assessee stated to have received-a gift of Rs. 30-lac from his father Sh. Ravinder Garg. Further, the capacity of his father too is not proved. Thus, the Ld. CIT(A) had confirmed the additions made by-the AO.

As regards addition, of Rs. 11,87,129/- on account of draft of Rs. 20.50 lacs found in his possession, the Ld. CIT(A) deleted the additions made by the AO and stated that merely because the assessee is a debtor of Rs. 8,62,871/- the father could not have given him Rs. 20.50 lacs is not tenable.

A notice u/s 274 read with section 271 of the I.T. Act was issued to the assessee on asking him to show cause as to why an order imposing a penalty on you should not be made u/s 271 of the I.T. Act, 1961.

In response to above notice, a written reply dated 18.11.2014 was received in which r- the assessee contended that as the assessee has filed appeal with Ld. CIT(A), Ghaziabad which is heard and hence the said appeal is pending for adjudication, the penalty u/s-271 (1)(c) may be kept in abeyance till the adjudication of the appeal.

Assessee's contention is =not acceptable as the Ld. CIT(A) has already given his decision vide order dated 16.10.2014 partly in favour of the assessee and it is only after the order that a show-cause notice dated 18.11:2014 has been issued by the undersigned. Penalty proceedings cannot be kept in abeyance because of the prescribed limitation for its completion after passing of the order by the CIT(A), Ghaziabad.

So far the merits of the case are concerned, the facts have been discussed in detail not only in the assessment Order but also in the order dated 16.10.2014 of the CIT(A). In both the orders, change of stand of the assessee at the time of seizure of cash of Rs. 30. lacs and a demand draft of RS. 20.50 lacs by the SST and at the time of statement requisitioned u/s 132A has been discussed in de. In my view it is a case of deliberate concealment of income by furnishing inaccurate particulars. Therefore, penalty u/s 271(1) (c) is clearly attracted in this case. The penalty us/s 271 (1)( c) is leviable even if the requisition amount was surrendered by the assessee (CIT v. Aboo Mohmed (Kar) 250 ITR 313, CIT Vs. Mohd. Mohtram Farooqui (Raj)-2591 TR-132): In the present case the assessee not, only failed to come clean on the sources of this " | requisition amount he changed the -track from the time of statement by the ; (Investigation Wing before the ADIT(Inv.) to before the AO. This clearly establishes the wilfull effort to evade tax with the guilty mind. Though it is now settled that mens rea is not essential for civil liability of penalty which includes penalty u/s

*271 (1)(c) as established by the Hon'ble Supreme Court in its decision in the case of Union of India Vs Dharrnendra Textile processors (SC) 306 ITR 277, Guljag Industries Ltd. Vs GTO (SC) 293 ITR 584, CIT Vs Atul Mohan Bindal (SC) 317 11 R 1. -Still a clear present of mens rea is being taken here for levy of higher rate of penalty on the assessee.*

*The minimum and maximum penalty works out to Rs. 7,74,560/- and Rs. 23,23,5001- respectively. Looking to the facts of the case I hereby impose maximum penalty of 200% of the tax sought to be, evaded i.e. Rs: 15,49,120/-, issue notice of demand- and challan."*

*3. Against the above penalty the appellant has come in appeal raising following grounds of appeal*

*"That the learned assessing officer had erred in law as well as on facts of the case in imposing the penalty u/s 271(l)(c) of the Income Tax Act amounting to Rs. 1549120/- i.e. @ 200% which is unjust, arbitrary, unlawful and highly excessive against the principle of natural justice which ought not to have been imposed by the learned assessing officer."*

*4. Having considered facts of the case and rival contentions, the appeal is decided as under:-*

*In the case the following additions/disallowances had been made by the A.O. in the assessment order dated 18.02.2014:-*

- 1. Addition of Rs. 30,00,000/- u/s 69A of the Act*
- 2. Addition of Rs. 11,87,129/-u/s 68 of the Act.*

*The CIT (Appeal), Ghaziabad vide his order Appeal No. 585/2013- 14/GZB dated 16.10.2014 upheld the addition of Rs. 30,00,000/- and deleted the addition of Rs. 11,87,129/-.*

*The Assessing Officer levied penalty proceedings on the addition of Rs. 30,00,000/- upheld by the CIT(A).*

*In the penalty order the A.O. has brought out that the assessee deliberately concealed the income and furnished inaccurate particulars. Thus, furnishing of inaccurate particular and concealment of income is clearly established in this case and it is a fit case for levy of penalty.*

*During appeal proceedings the appellant in his written submission filed on 06.01.2015 has contended that the A.O. had not considered and examined the documentary evidences produced before him. The appellant further contended that*

*the A.O. had levied penalty on deleted addition of Rs. 11,87,129/- which is contrary to provisions of Section 271(l)(c) and penalty had been imposed on higher rate which are also against the penal provisions.*

*The contention of the appellant and facts of the case have been gone through. The contention that penalty has been levied on deleted addition is not correct. From the penalty order, it is seen that AO has referred to CIT (A)'s order and has levied penalty after receipt of order of CIT (A) on the addition sustained. The contention that documentary evidences produced before the A.O. were not considered is not tenable. In fact, the issue stands examined by CIT (A) in quantum appeal and his findings as quoted by AO clearly established it to be a case of furnishing inaccurate particular of income and concealing income. Findings of the CIT (A) are reproduced here:-*

*“The statement of the assessee that the sum of Rs. 30 lacs was a gift from his father out of sale proceeds of his jewellery shop is nothing but an after-thought and a concocted fanciful story to defraud the revenue because at the first instance i.e. in the statement u/s 132A recorded by DDIT(Inv.)-I, Ghaziabad the assessee had never stated that the amount of cash of Rs. 30 lacs was a gift from his father. It was only on 26.08.2013 that the assessee stated to have received – a gift of Rs. 30 lac from his father Sh. Ravinder Garg. Further, the capacity of his father too is not proved.”*

*The contentions of appellant are not tenable in view of the facts above and the legal position in respect of penalty of 271 (1 )(c) as under:-*

*(i) The expression used in clause (c) of section 271(1) is ‘has concealed the particulars of his income’ of ‘furnished inaccurate particulars of such income’. Therefore, both in cases of concealment and inaccuracy, the phrase ‘particulars of income’ is used. It will be noted that as regards concealment, the expression in clause (c) is has concealed the particulars of his income’ and not ‘has concealed his income’. It is obvious that the penal provisions would operate when there is a failure of duty to disclose fully and truly particulars of income, imposed under the Act and the Rules there under. The duty is enjoined upon a person to make a correct and complete disclosure of his income and it is only when he fails in his duty*

*by not disclosing his income or part thereof, he conceals the particulars of his income. The duty is enjoined upon him to make a complete disclosure of his income as well as a correct disclosure. Therefore, if the disclosure made of the particulars of income is incorrect, then also he commits breach of his duty. Such defaults entail the penal consequences contemplated by section 271 (1 )(c).*

*(ii) The position of law with regard to levy of penalty u/s 271(1 )(c) has undergone a substantial change after the insertion of Explanation (1) to section 271(1)(c) w.e.f 01.04.1976. Explanation (1) to section 271(1 )(c) raises a presumption that as and when any amount is added or disallowed in computing the total income the same shall be deemed or represent the income in respect of which particulars have been concealed. Similar view has been expressed in the case of A.M. Shah & Co. Vs CIT (Guj) 238 ITR 415.*

*(iii) Further w.e.f. 10.09.1986 amendment has been made in Explanation 1-B to section 271(1)(c). After this amendment further onus has been placed on the assessee to prove that the explanation furnished by him was bonafide. The position now is that unless and until the assessee substantiates the explanation and proves that such an explanation was bonafide the addition made to his income shall deem to represent the concealed income.*

*(iv) On the analysis of the provisions of section 271(1 )(c) it is observed that the Explanation 1 to section 271(1) provides for the situation where no explanation for the failure is offered by the assessee or where the explanation that has been offered is found to be false or where the assessee is not able to substantiate the explanation offered by him. In all these cases, the amount added or disallowed in computing the total income of such person shall be deemed to represent the income in respect of which particulars have been concealed. As per the Proviso to this Explanation, the onus to establish that the explanation offered was bonafide and facts relating to the same and material to the computation of his income have been disclosed by him will be on the person charged for concealment.*

*(v) As per the provisions of Explanation (1)(B), now the entire onus is on the assessee to not only offer an explanation but also to substantiate it and to prove that the presumption was bonafide. At the same time the presumption so raised by the Explanation (1) is rebuttable. The effect is that unless and until the assessee rebuts the presumption, he would be liable for penalty under section 271(1 )(c) of the Act. It is now an established law that the presumption would not stand rebutted merely by furnishing any general or fantastic or fanciful or unreasonable explanation by assessee. The explanation should be based on cogent and relevant material and should be acceptable to the authorities. In this connection*

*reference may be made to the Delhi High Court's decision in the case of CIT Vs. Gurbachan Lai reported in 250 ITR 157(Delhi)*

*(vi) The apex court had approved the interpretation placed upon the Explanation by a Full Bench of the Punjab and Haryana High Court in Viswakarma Industries Vs. CIT (1982) 135 ITR 652.*

*(vii) Similar view has been expressed by the Kerala High Court in the ease of CIT Vs. K.P. Madhusudana reported in 246 ITR 218. This decision has been affirmed by the Supreme Court in 251 ITR 99. Affirming the aforesaid decision, the Hon'ble Supreme Court has further held that after insertion of explanation its earlier decision in the case of Sir ShadiLal Sugar and General Mills Ltd. Vs. CIT reported in 168 ITR 705 (SC) was no longer applicable.*

*(viii) The Delhi High Court in the case of CIT Vs. Sohan Singh 254 ITR 170 has. held that for the purpose of penalty matter has to be examined in the background of Explanation to section 271 (1)(c). It has also been held that evidence recorded during the course of assessment proceedings, though not conclusive, are not totally irrelevant. They could be taken note of. According to the High Court what was required was that the assessee must offer an explanation which, if found to be untenable or unacceptable, then the penalty can be levied under section 271(1 )(c) of the IT Act.*

*The scope of s. 271(1)(c) has also been elaborately discussed by the Supreme Court in UOI vs. Dharmendra Textile Processors 306 ITR 277 (SC) and CIT vs. Atul Mohan Bindal 317 ITR 1 (SC). The Explanations appended to section 271(1)(c) of the Income-tax Act, 1961, entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The object behind the enactment of section 271(1)(c) read with Explanations indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C of the Income-tax Act.*

*In view of above discussion, on the given fact's, penalty is confirmed in principle. Further, in my considered view, in facts and circumstances of the case, the penalty at the fate of 200% is also justified as the assessee concocted deliberately a fanciful story of gift from father. Therefore, I confirm the penalty.”*

(5) The present appeal before us has been filed by the Assessee against the aforesaid order dated 10.07.2015 of the Ld. CIT(A) in Income Tax Appellate Tribunal ("ITAT", for short). The appeal was fixed for hearing from time to time; the details of which are as under:

<b><u>DATE</u></b>	<b><u>Remarks</u></b>
20/07/2017	- Bench did not function
04/09/2017	- Adjournment on the request of both sides
02/11/2017	- Adjournment on the request of the assessee's side
17/01/2018	- Bench did not function
03/04/2018	- Adjournment on the request of the assessee's side
20/06/2018	- Adjournment on the request of the assessee's side
03/12/2018	- Bench did not function
18/09/2018	- Bench did not function
03/12/2018	- Adjournment on the request of the assessee's side
14/01/2019	- Adjournment on request of the assessee's side
13/03/2019	- Adjournment on the request of assessee's side and last opportunity given to assessee
02/07/2019	- None appeared from assessee's side

(6) At the time of hearing before us, no one appeared on behalf of the assessee. The Ld. Departmental Representative ("DR", for short) supported the orders of the lower authorities namely AO and Ld. CIT(A). He relied on the orders of the AO and Ld. CIT(A) ; and also relied on the decisions of the Hon'ble High Court of Delhi in the cases of Commissioner of Income-

tax vs. Zoom Communication (P.) Ltd. [2010] 191 Taxman 179 (Delhi) and Commissioner of Income-tax, Delhi-IV vs. Escorts Finance Ltd. [2009] 183 Taxman 453 (Delhi).

(7) After hearing the Ld. DR and after carefully considering the materials available on record; we are of the view that the order of the Ld. CIT(A) is well-reasoned and is in accordance with law, having regard to facts and circumstances of the present case. Therefore, we do not see any reason to interfere with the finding of the Ld. CIT(A). Impugned order of Ld. CIT(A) is, therefore, hereby confirmed. Thus, Ground raised in this appeal is dismissed accordingly.

(8) In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 12<sup>th</sup> day of July, 2019.

**Sd/-**

**(KULDIP SINGH)  
JUDICIAL MEMBER**

**Sd/-**

**(ANADEE NATH MISSHRA)  
ACCOUNTANT MEMBER**

Dated:12.07.2019

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	