

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5316/Del/2018
Assessment Year: 2013-14

Sharda Sugar Company,
C/o N.K. Arora, Advocate,
219, Civil Line South,
Muzaffarnagar,
Uttar Pradesh.

Vs. ITO,
Ward 2(3),
Muzaffarnagar (UP).

PAN: AAFFS1902E

(Appellant)

(Respondent)

Assessee by	:	Smt. Prem Lata Bansal, Sr. Advocate & Shri Abhishek Kumar, Advocate
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	30.07.2019
Date of Pronouncement	:	01.08.2019

ORDER

This appeal by the assessee is directed against the order dated 30.08.2017 of the CIT(A), Muzaffarnagar, relating to Assessment Year 2013-14.

2. The assessee in the various grounds of appeal has challenged the order of the CIT(A) in confirming the penalty of Rs.10 lakhs u/s 271(1)(c) of the Act.

3. There is a delay of 78 days in filing of this appeal. The ld. counsel for the assessee referring to the condonation application filed along with the affidavit of the assessee, submitted that during the relevant time, the assessee was a partnership firm

consisting of three partners, namely, Shri Puneet Tandon, Shri Sumit Tandan and Smt. Sharda Tandan. Shri Sumit Tandon was retired from the partnership firm on 31.03.2015. Therefore, the entire responsibility came to Shri Puneet Tandon and Smt. Sharda Tandon. However, Smt. Sharda Tandon was a senior citizen and was suffering from cancer and had also undergone surgery twice due to cancer. Even Shri Puneet Tandon is also suffering from depressive disorder and during the month of May and June, he was seriously ill for which he could not give instructions to the counsel. She accordingly submitted that due to this unavoidable circumstances, there is a delay in filing of the appeal before the Tribunal.

4. After hearing the rival contentions made by both the sides, the delay in filing the appeal by the assessee is condoned.

5. The ld. counsel for the assessee, at the outset, filed the copy of the order of the Tribunal in assessee's own case vide ITA No.6891/Del/2017, order dated 22nd July, 2019 and submitted that the quantum addition has been restored to the file of the Assessing Officer for fresh adjudication. Therefore, the penalty does not survive. She accordingly submitted that the penalty so levied by the Assessing Officer and sustained by the CIT(A) should be cancelled.

6. The ld. DR, on the other hand, supported the order of the Assessing Officer and CIT(A).

7. I have considered the rival arguments made by both the sides and perused the material available on record. A perusal of the order of the Tribunal shows that the quantum addition has been restored to the file of the Assessing Officer for deciding the issue afresh. Therefore, the penalty so levied by the Assessing Officer and sustained by the CIT(A) does not survive and therefore the same is cancelled. However, the Assessing Officer is at liberty to initiate penalty proceedings after the matter is decided by him in the set aside proceedings.

8. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 01.08.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 01st August, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi