

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA Nos.5136 & 5137/Del/2018  
Assessment Year: 2009-10

Fateh Singh,  
C/o C.S. Anand, Advocate,  
104, Pankaj Tower,  
10-LSC, Savita Vihar,  
Delhi.

Vs. ITO,  
Ward 1(2),  
Meerut.

PAN: EXTPS2050E

(Appellant)

(Respondent)

Assessee by	:	Shri C.S. Anand, Advocate
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	30.07.2019
Date of Pronouncement	:	01.08.2019

ORDER

ITA No.5136/Del/2018 filed by the assessee is directed against the order dated 23<sup>rd</sup> May, 2018 of the CIT(A), Meerut relating to Assessment Year 2009-10. ITA No.5137/Del/2018 filed by the assessee is directed against the order dated 30<sup>th</sup> May, 2018 of the CIT(A), Meerut relating to Assessment Year 2009-10 confirming the penalty of Rs.18,200/- levied u/s 271(1)(c) of the IT Act.

2. For the sake of convenience both these appeals were heard together and are being disposed of by this common order.

3. Facts of the case, in brief, are that the assessee is an individual and was a non-filer of return. On the basis of the AIR information regarding sale of immovable property by the assessee during the F.Y. 2008-09, without quoting of his PAN, the Assessing Officer issued notice u/s 148 on 29<sup>th</sup> March, 2016 after recording reasons and obtaining sanction of the PCIT, Meerut. Subsequently, notices u/s 142(1) were also issued and served on the assessee. However, there was no compliance from the side of the assessee for which the Assessing Officer completed the assessment u/s 144 of the IT Act and determined the total income of the assessee at Rs.18,27,890/- on account of long-term capital gain. The Assessing Officer, thereafter, initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of Rs.18,200/- u/s 271(1)(c) of the IT Act. Since there was non-compliance before the CIT(A) despite number of opportunities granted, the Id.CIT(A), in the *ex parte* order passed by him, sustained the addition made by the Assessing Officer and confirmed the penalty levied u/s 271(1)(c) of the IT Act, 1961.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. counsel for the assessee submitted that the assessee lives in a village and the notices were never received by him in time for which there was such non-compliance. He submitted that in the interest of justice the assessee should be given an opportunity of being heard and the matter may be restored to the file of the Assessing Officer.

6. The ld. DR, on the other hand, strongly opposed the arguments advanced by the ld. counsel and submitted that despite number of opportunities granted, the assessee neither appeared before the Assessing Officer nor before the CIT(A). Therefore, the order of the CIT(A) should be confirmed.

7. I have considered the rival contentions made by both the sides and perused the orders of the Assessing Officer and CIT(A). It is an admitted fact that due to non-appearance before the Assessing Officer as well as the CIT(A), both the authorities have passed ex parte orders. Considering the totality of the facts of the case and in the interest of justice, I deem it appropriate to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer and cooperate in completion of the assessment proceedings, failing which, the Assessing Officer is at liberty to pass appropriate order as per law. I hold and direct accordingly.

8. Since the quantum addition is restored to the file of the Assessing Officer, therefore, the penalty is hereby cancelled and the Assessing Officer is at liberty to initiate fresh penalty proceedings after completion of the assessment if so required. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

The decision was pronounced in the open court on 01.08.2019.

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

Dated: 01<sup>st</sup> 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