

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 1635/Del/2019
Assessment Year: 2014-15

DEEPAK JAIN,
S-130, FF, GREATER KAILASH
PART-I, NEW DELHI -48
(PAN: AANPJ2780P)
(ASSESSEE)

VS. ITO, WARD 35(2)
NEW DELHI

(RESPONDENT)

Assessee by: Sh. Shyam Kishan Saraf, CA
Revenue by: Ms. Ekta Vishnoi, Sr. DR.

ORDER

This appeal is filed by assessee against the Order dated 12.10.2018 passed by the Ld. CIT(A)-12, New Delhi relating to Assessment Year 2014-15 on the following grounds:-

- 1. That penalty has been levied without jurisdiction.*
- 2. That on the facts and in the circumstances of the case, penalty levied u/s 271(1)(c) by the Assessing Officer in utter disregard of the Principles of Natural Justice is unjustified, illegal, erroneous and needs to be summarily deleted.*
- 3. That Notice u/s 274 read with Section 271 dated 22.12.2016 is itself vague & any penalty levied on such notice is void ab initio.*
- 4. That no notice (final penalty show cause notice) dated 19.06.2017 on which penalty has been levied was served upon the appellant.*
- 5. That the AO based his satisfaction for levying the penalty on the basis of his own surmises and conjectures by treating bonafide omission by the Appellant as concealment or furnishing of inaccurate particulars of income.*
- 6. That penalty was levied u/s 271(1)(c) in respect of order Passed by Ld. AO u/s 143(3) when appellant did not receive mandatory notice u/s 143(2) without which assessment proceedings are void ab-initio.*

7. That AO levied penalty u/s 271(1)(c) despite acknowledging the fact that no addition was made by the Ld AO in his order u/s 143(3).

8. That the orders of Penalty are bad in law and same have been wrongly and illegally made by applying Section 271(1)(c) in gross contravention to laid down laws of the land.

9. That the Ld AO in utter disregard to the principle of judicial discipline laid down by the Supreme Court and various high court tried to distinguish the binding case laws of jurisdictional ITAT on untenable grounds.

10. That the Ld. AO did not wilfully grant any opportunity to the appellant to rebut the irrelevant case laws relied upon by him and proceeded to levy the penalty.

11. That CIT (Appeals)-12 has erred in facts and law in confirming the illegal orders of the Assessing officer.

12. That the aforesaid grounds of appeal are without prejudice to one another.

13. That the Appellant craves leave to add, amend, modify, rescind, supplement or alter any of the grounds stated here in above either before or at the time of hearing of this appeal.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. During the hearing, Ld. counsel for the assessee has stated that Ld. CIT(A) has not given sufficient opportunity to the assessee for substantiating the claim to the assessee and passed the exparte order without hearing the assessee. He further stated that assessee is having all the necessary evidences for substantiating the claim of the assessee. Hence, he requested that the issues in dispute may be remitted back to the file of the Ld. CIT(A) to decide the same afresh, as per law after giving adequate opportunity of being heard to the assessee.

4. On the contrary, Ld. DR relied upon the orders of the revenue authorities.

5. I have heard both the parties and perused the records especially the orders of the revenue. No doubt that the assessee remained non-cooperative before the Ld. CIT(A). Ld. Counsel for the assessee undertakes to appear before the Ld. CIT(A) and will cooperate in speedy disposal of the appeal as well as not seek any unnecessary adjournment before the Ld. CIT(A). In the interest of justice, I set aside the issues in dispute to the file of the Ld. CIT(A) for hearing on **13.01.2020 at 10.00 AM** with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee. It is made clear that no notice for hearing will be issued by the Ld. CIT(A). Assessee is also directed through its Counsel to appear before the Ld. CIT(A) on **13.01.2020 at 10.00 AM** for hearing to substantiate its case and did not take any unnecessary adjournment in the case.

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

Order pronounced on 03/10/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 03/10/2019

"SRB"

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches