



**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.81/ALLD/2018  
Assessment Year: 2005-06

Anoop Singh Ahuja Bazar Kaushambi	v.	Income Tax Officer Allahabad
TAN/PAN:AQKPS6453R		
(Appellant)		(Respondent)

Appellant by:	Shri S. K. Jaiswal, C.A.		
Respondent by:	Shri A. K. Singh, D.R.		
Date of hearing:	18	11	2019
Date of pronouncement:	19	11	2019

**ORDER**

**PER A. D. JAIN, V.P.:**

This is assessee's appeal against the order of the ld. CIT(A), Allahabad, dated 21/12/2017 for assessment year 2005-06, taking the following grounds:

1. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the appeal without giving adequate / effective opportunity of being heard.
2. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustain penalty of Rs.3,73,113/- without appreciating the fact that penalty levied with reference to the additions of Rs.11,25,084/- by invoking the provision of section 68 has been deleted by Hon'ble ITAT to the extent of Rs.2,15,000/- and additions to the extent of Rs.8,00,000/- has been set aside to the file of assessing officer.

3. BECAUSE the learned Commissioner of Income tax (Appeals) failed to appreciate the fact that appellant has explained the source of remaining amount of deposit of Rs.100000/- and no penalty is attracted.

4. BECAUSE the appellant has neither conceal nor furnished any inaccurate particulars of income to which the penalty provisions as contained u/s 271(l)(c) is attracted.

2. The brief facts of the case are that as per AIR data, the assessee had deposited Rs.11,62,386/- in the bank account with Bank of Baroda. The assessment was reopened under section 147 of the Income Tax Act, 1961. The assessee had submitted before the Assessing Officer that there were deposits of Rs.2,15,000/- on 07.06.2004 and Rs.9,00,000/- on 29.10.2004 in Bank of Baroda. The assessee explained before the Assessing Officer the source of the same to be income from agricultural land, income from salary and gift etc. It was also explained that the deposits in the bank account are from past savings, etc., amounting to Rs.17,54,291/-. The bank statement reveals, apart from the above deposits, that there is a credit of Rs.10,084/- in the bank account of the assessee. Therefore, the total deposits were found to be of Rs.11,25,084/- and the explanation offered by the assessee was not found to be satisfactory and accordingly, the Assessing Officer made the addition of Rs.11,25,084/- to the income of the assessee, which has been confirmed by the ld. CIT(A).

3. The Assessing Officer, on being satisfied that the assessee has concealed the material particulars in respect of the above deposits, also initiated penalty proceedings under section 271(1)(c) of the Act and levied a penalty of Rs.3,73,120/- being 100% of the tax sought to have been evaded by the assessee.

4. Aggrieved, the assessee preferred an appeal before the ld. CIT(A), who, vide his order dated 21/12/2017 dismissed the appeal of the assessee, confirming the levy of penalty under section 271(1)(c) of the Act.

5. Before us, the ld. Counsel for the assessee has submitted that in the quantum proceedings, the Tribunal vide its order dated 6/6/2014 in ITA No.458/Alld/2012 had deleted the addition of Rs.2,15,000/- and confirmed the addition of Rs.1 lakh out of the total addition of Rs.11,25,084/-, on the basis of which penalty has been imposed by the Assessing Officer, and the issue relating to the addition of Rs.8,10,084/- has been restored to the file of the Assessing Officer. Therefore, the penalty, on the entire addition of Rs.11,25,084/-, is not sustainable in the eyes of law, hence the same may be deleted.

6. The ld. D.R., on the other hand, has submitted that the Tribunal, in the quantum proceedings, had confirmed the addition of Rs.1 lakh and deleted the addition of Rs.2,15,000/- out of the addition of Rs.11,25,084/- therefore, except on the amount of Rs.2,15,000/-, penalty on the rest of the amount is sustainable in the eyes of law.

7. Heard. We find that the penalty of Rs.3,73,113/-, under section 271(1)(c) of the Act, has been levied by the Assessing Officer on the addition of Rs.11,25,084/-, which has been confirmed by the ld. CIT(A). However, the Tribunal, in the quantum proceedings, vide its order dated 6/6/2014 in ITA No.458/Alld/2012, confirmed the addition of Rs.1 lakh and deleted the addition of Rs.2,15,000/- out of the total addition of Rs.11,25,084/-, and the order of the ld. CIT(A) on the issue relating to the rest of the addition has been set aside and restored to the file of the Assessing Officer for deciding the same

afresh. Since the penalty of Rs.3,73,113/- has been levied on the addition of Rs.11,25,084/- and out of which, Rs.1 lakh has been confirmed and Rs.2,15,000/- has been deleted by the Tribunal and the issue relating to the rest of the addition, i.e., of Rs.8,10,084/- has been restored to the file of the Assessing Officer for deciding the same afresh, penalty under section 271(1)(c) of the Act is not sustainable on the entire addition of Rs.11,25,084/-. However, penalty, on the addition of Rs.1 lakh confirmed by the Tribunal, shall be leviable. We, therefore, set aside the order of the ld. CIT(A) and delete the penalty and restore the matter to the file of the Assessing Officer with a direction to pass a fresh penalty order on the addition of Rs.1 lakh confirmed by the Tribunal in the quantum proceedings.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 19/11/2019.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:19/11/2019

JJ:1811

Copy forwarded to:

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

By order  
Assistant Registrar