

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

**SH. AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SH. Dr. B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No. 3611/Del/2019  
Assessment Year: 2014-15**

Sunila Awasthi House No. 239, 3 <sup>rd</sup> Floor Sukhdev Vihar, New Delhi-110025 <b>PAN : AAEP9591J</b> <b>(APPELLANT)</b>	Vs	ACIT, Circle-61(1), E-2 Block, Pratyaksh Kar Bhawan, Civic Centre, New Delhi <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Deepak Chopra, Sh. Harpreet Singh, Ajmani and Sh. Yojit Pareeil, Adv.</b>
<b>Respondent by</b>	<b>Sh. N.K.Bansal, Sr. DR</b>

<b>Date of Hearing</b>	<b>20.08.2019</b>
<b>Date of Pronouncement</b>	<b>22.11.2019</b>

**ORDER**

**PER AMIT SHUKLA, JM:**

The aforesaid appeal has been filed by the assessee against impugned order dated 15.03.2019, passed by Ld. CIT (Appeals)-38, New Delhi, in relation to the penalty proceedings u/s 271(1)(c).

2. Assessee is mainly aggrieved by levy of penalty of Rs. 14,08,240/- u/s 271(1)(c) on account of addition of Rs. 40,00,0053/- an interest of Rs. 1,43,578/-.

3. The facts in brief are that assessee is an individual engaged in legal profession and practicing as a corporate lawyer and is a Senior Member of AZB Partner & LLP Firm Delhi. She had filed her return of income on 15.11.2014 declaring income of Rs. 1,13,94,100/-. During the course of assessment proceedings, the AO noted that there was mismatch of professional receipts as reflected in Form 26AS and as shown in Income Tax Return. In response to the show cause notice it was submitted that it was a bonafide mistake due to negligence of Chartered Accountant who has carried out the audit and prepared the Income Tax Return and she had no intention not to disclose the entire professional receipts, specifically when entire fees have been received by way of cheque. However, the Ld. AO held that the difference of Rs. 40,00,053/- should be taxed as the professional receipts for the year.

4. Similarly AO noted that as per 26AS, assessee has received interest income of Rs. 14,35,863/- however, the interest income offered in the income tax return was Rs. 12,92,285/- accordingly addition of Rs. 1,43,578/- on account of interest income was made.

5. The AO has levied the penalty on the aforesaid additions rejecting the assessee's explanation as incorporated in the impugned orders and imposed penalty of 14,08,420/-. This penalty has been confirmed by the Ld. CIT(A) holding that if assessee's case would not have come for scrutiny proceedings, the concealment would have remain undetected and it is difficult to believe that the Chartered Accountant who has carried out the

audit u/s 44AB and filed the Income Tax Return could have committed mistake.

6. Before us Ld. Counsel Mr. Deepak Chopra, submitted that first of all the professional fees amounting to Rs. 40,00,053/- was reflected under the head advances in the books of account instead of including it in the receipts and such an amount of advance shown has been offered to tax in the subsequent year, which was much before the commencement of the assessment proceedings. He further submitted that assessee has entrusted entire accounting, audit and tax computation work to her Chartered Accountant and he has wrongly shown the part of receipts as advance failed to reconcile the receipts with Form 26AS. Further the fixed deposit interest income has been offered net of TDS instead of gross amount and therefore, this was pure clerical mistake and it cannot be held that it is a case of furnishing of inaccurate particulars or concealment of particulars of income. Reliance was placed on various decisions including the judgment of Hon'ble Supreme Court in the case of Price Water House Coopers (P) Ltd. vs. CIT-SC (2012) 348 ITR 306.

7. On the other hand, Ld. DR strongly relied upon the order of the CIT (A) and further submitted that there was a clear cut concealment of professional receipts during the year as the correct amount was not offered to tax and therefore, it is a fit case for levy of penalty.

8. We have considered the rival submissions and also perused the relevant finding given in the impugned orders. As stated above, assessee is practicing corporate lawyer whose accounts

are duly audited and entire computation of income and filing of Income Tax Return is handled by professional Chartered Accountant. In so far as the professional fees amounting Rs. 40,00,053/- which was reflected in Form 26AS but not in the Income Tax Return, then definitely it is a mistake on the part of the professional who has audited the accounts and filed the Income Tax Return. It has been stated before the authorities that this amount was shown under the head 'advances' and same has been offered to tax in the subsequent year. Though such a professional receipt has wrongly been reflected under the head advance when assessee is following cash system of accounting, but it cannot be held that there is any kind of concealment of income or furnishing of inaccurate particulars. Once, even before the scrutiny proceedings the assessee had offered the amount for tax on the same professional receipts in the subsequent year, then that goes to prove that assessee had not deliberately tried to conceal her income or furnish any inaccurate particulars. This amount has been reflected in the books of accounts and in the audit report though wrongly taken under the head 'advances'. Under these circumstances can it be held that assessee had concealed any income when entire income is through cheque and duly disclosed in the books and even tax has been paid in subsequent year when rates of taxes are same and there is no loss of revenue. Thus, penalty on such amount cannot be upheld. The same is directed to be deleted.

9. Similarly the addition on account of interest is mainly on the ground that assessee had shown the interest income net of TDS instead of gross amount. This again is a mistake of

professional who has filed the income tax return. Such a mistake does not lead to any conclusion at assessee has deliberately concealed the income or not paid any taxes. On this addition also no penalty can be sustained. Accordingly the same is directed to delete.

10. In result, appeal of the assessee is allowed.

**Order pronounced in the Open Court on 22<sup>nd</sup> November, 2019.**

**Sd/-  
(Dr. B.R.R.KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

Dated: 22/11/2019  
\*Binita\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	.11.2019
Date on which the typed draft is placed before the dictating Member	.11.2019
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	