

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI O.P.MEENA, ACCOUNTANT MEMBER
ITA No.2853/Del./2016, A.Y. 2010-11**

Resident Welfare & Cultural Society E-1, Sector-26, Noida PAN : AAAAR8417R (APPELLANT)	Vs.	JCIT Range-1 Noida (RESPONDENT)
--	-----	--

ASSESSEE BY :
REVENUE BY : Shri S.N.Meena, Sr. DR

Date of Hearing : 13.11.2019
Date of Order : 03.01.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Resident Welfare and Cultural Society, Noida (hereinafter referred to as 'the assessee') by filing the aforesaid appeals, sought to set aside the impugned order dated 29/02/2016 passed by Ld. Commissioner of Income Tax(Appeals)-1, Noida confirming the penalty u/s 271(1)(c) of the Act levied by the AO on the grounds inter alia that :

“1. The learned CIT(Appeals) has erred in law and on facts in

confirming IMPOSING of PENALTY by the AO, Rs. 1,38,090/- on the ground of furnishing inaccurate particulars of income to the extent of Rs. 6,17,930/-

2. The order of the AO as upheld by the learned CIT-A be declared as null and void ab-initio.

3. The appellant craves leave and sanction of the Hon'ble ITAT to file additional evidence, if so required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be educed or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated.

4. The appellant craves leave to and permission of the Hon'ble ITAT to add to or alter any of the grounds of appeal at any time upto the final decision of the appeal.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed u/s 143(3) of the Act at total income of Rs. 6,17,932/- by making addition of Rs. 2,13,082/- and 4,04,850/- on account of interest and on account of third party receipts respectively not covered by principle of mutuality respectively by denying the benefit of Section 11 of the Act, initiated the penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. Declining the contentions raised by the tax payer proceeded to levy penalty of Rs. 1,38,090/- @ 150% of the tax sought to be evaded for furnishing inaccurate particulars of income.

4. Assessee carried the matter before Ld. CIT(A) by filing the appeal who has confirmed the penalty by dismissing the appeal.

Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. At the very outset Ld. AR for the assessee brought to the notice of the bench that this appeal has been decided by Ld. CIT(A) at the back of the assessee without issuing any notice and that assessee intended to brought on record additional evidences but there was no occasion for him to lead such additional evidences as no notice has been served upon him and requested for granting. One more opportunity to prove its case.

7. In order to examine the contentions raised by Ld. AR for the assessee para 2 of the impugned order passed by Ld. CIT(A) is very important, which is extracted for ready perusal as under :-

“2. The case was fixed for hearing for 16/02/2016 however, on the said date the appellant through counsel submitted that due to unavoidable circumstances the appellant was not able to attend to the hearing and asked for an adjournment. The appellant has not specified for what compelling circumstances it was unable to attend the hearing In the absence of the same it cannot be ascertained if there was reasonable and adequate cause for not attending the hearing and for allowing

adjournment as requested. The present appeal was filed by the appellant in the month of March, 2015 and has therefore been pending for about a year, there has been sufficient time for preparing the case and seeking a long adjournment is neither necessary nor appropriate. The disposal of appeals are governed by the statutory instructions of the CBDT and it is the consistent endeavor of the CBDT to get the pending appeals disposed as fast as possible and the individual CsIT (Appeals) are assigned specific targets for disposal of pending appeals. In view of these controlling facts and circumstances I am not inclined to accept the request for adjournment on the ground of occupation of counsel in closing. As sufficient opportunity has already been allowed to the appellant and appellant has not considered it necessary to enter appearance and defend the case the pending appeal is decided on the basis of the paper book filed by the appellant and the impugned order of penalty passed by the ld. A.O.”

8. Bare perusal of para 2 of the impugned order passed by Ld. CIT(A) goes to clinch the controversy at hand in favour of the assessee because Ld. CIT(A) has never given notice to the assessee but straightaway rushed to fix the case for hearing on 16.02.2016 and has apparently incorporated the wrong facts in para 2 of the impugned order that on 16.02.2016 “assessee through counsel submitted that due to unavoidable circumstances, the assessee was not able to attend the hearing and asked for an adjournment”. No name of the counsel of the assessee has been given. Moreover it is not necessary for the assessee to put in personal appearance during appellate proceedings before Ld. CIT(A) because when his counsel whose name has otherwise not come on record, has appeared before Ld. CIT(A) then it is difficult to believe as to why the opportunity was not given to the counsel for assessee to put forth

its case.

9. Further facts incorporated in para 2 of the impugned order go to prove that the Ld. CIT(A) without providing adequate opportunity of being heard to the assessee harped upon CBDT instructions that ; specific target for disposal of pending appeal is to be met with, hence, he declined the request of adjournment on the ground of preoccupation of counsel in closing. Two self-contradictory facts have been incorporated in para 2 by Id. CIT(A) one : that due to unavoidable circumstances, the assessee was not able to attend hearing and asked for adjournment, two : that “adjournment declined on the ground preoccupation of counsel in closing” go to prove that the appeal has been decided without issuing the notice and without calling for the presence of assessee to put forth his case, which is violation of principle of Rule of natural Justice, because nobody can be condemned unheard.

10. In view of what has been discussed of this case and without going into merits, we are of the considered view that the order passed by the Ld. CIT(A) at the back of assessee even without issuing any notice to it is not sustainable in the eyes of law, hence, ordered to be set aside to Ld. CIT(A) to decide afresh by providing adequate opportunity of being heard to the assessee. Consequently,

appeal filed by assessee is allowed for statistical purposes.

Order pronounced in open court on this 3rd January, 2020.

**Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIALMEMBER**

Dated : 03 /01/ 2020

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-1, Noida.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	06.12.2019
Date on which the typed draft is placed before the dictating Member	09.12.2019
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	

