

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No.8033/Del/2018
Assessment Year: 2014-15

Rohan Juneja,
I-88, Kirti Nagar,
New Delhi
(PAN:AFKPJ9548K)
(ASSEESSEE)

vs.

Income Tax Officer,
Ward-49(1), New Delhi

(RESPONDENT)

Assessee by: Sh. B.L. Gupta, I.T.P.

Revenue by: Sh. Manoj Kumar Chopra, Sr. DR.

ORDER

This appeal is filed by the assessee against the Order passed by the Ld. CIT(A)-17, New Delhi, relating to Assessment Year 2014-15 on the following grounds:-

1. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in dismissing the appeal of the assessee.

2. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that penalty u/s 271(l)(c) has been rightly levied by the AO.

3. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that penalty notice which does not mention specifically any particular offence of concealment of income or filing of inaccurate particulars of income is of no value and does not affect the validity of penalty notice and also the penalty order.

4. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified that the penalty has been rightly levied by the AO even when there is no specific satisfaction regarding concealment of income or filing of inaccurate particulars of income of the AO in the assessment order.

5. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in sustaining the penalty even without proving either concealment of income or filing of inaccurate particulars of income.

6. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in sustaining the penalty order even without satisfying the condition necessary for levy of penalty u/s 271(1)(C).

7. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in not holding the penalty notice as invalid in the absence of specific default of concealment or filing of inaccurate particulars of income in the penalty notice."

2. Brief facts of the case are that the assessee filed his return of income disclosing income from retail business to the tune of Rs. 01,45,000/- (08% of the gross turnover of Rs. 18,12,500/-). The Assessing Officer noticed that there was a cash deposit of Rs. 25,99,365/- in ICICI bank and Rs. 28,71,310/- in Axis Bank account. According to the assessee these deposits were made on account of purchase and sale of clothes. The Assessing Officer asked the assessee as to why total cash receipt of Rs. 53,73,675/- may not be treated as turnover in assessee's case for working out the profit under section 44AD of the Income Tax Act. As the assessee did not maintain books of accounts and also issued show cause notice under section 274 read with section 271(1)(c) of the Act and finally imposed the penalty of Rs. 71,045/- under section 271(1)(c) of the Act. Against the penalty order, assessee filed the appeal before the learned First Appellate Authority who vide his impugned order dismissed the appeal filed by the assessee and now the assessee has filed the present appeal before the Tribunal.

4. At the time of hearing, learned counsel for the assessee stated that the Revenue authorities has imposed the penalty in dispute on estimation basis. He further stated that the penalty on the basis of estimation is not sustainable in the eyes of law. He further stated that assessee is a very small businessman and having very low income business and requested for lenient view under the facts and circumstances of the present case.

5. The learned DR relied upon the orders passed by the Revenue authorities.

6. After hearing both the parties and perusing the orders passed by the Revenue authorities, I am of the view that the Assessing Officer and the learned First Appellate Authority has levied the penalty of Rs. 71,045/- merely on estimation basis, without bringing on record any adverse evidence contrary to the averment of the assessee. Assessee is very small businessman and paying the tax @ 08% of profit on gross turnover under section 44AD of the Act, and assessee did not maintain the books of accounts. Even otherwise, AO has not specifically pointed out any defect in the return of income filed by the assessee regarding concealment of income or furnishing of inaccurate particulars of income.

7. Keeping in view the facts and circumstances of the present case, I am of the view that this is not a fit case for levying the penalty under section 271(1)(c) of the Act and the impugned order passed by the learned First Appellate Authority is not sustainable in the eyes of law

therefore, I delete the penalty in dispute by cancelling the impugned order and accepting the appeal filed by the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 15/01/2020.

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

Date: 15/01/2020
SH

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches