

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F/SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA Nos.5895 & 5896/Del/2018
Assessment Year: 2014-15

George Giri Paul,
JLFS, 305, Golf Apartments,
Maharishi Raman Marg,
Sujan Singh Park,
New Delhi.

Vs ITO,
Ward-61(1),
New Delhi.

PAN: APMPP3949Q

(Appellant)

(Respondent)

Assessee by	:	Shri George Giri Paul, Assessee
Revenue by	:	Shri Pradeep Singh Gautam, Sr. DR
Date of Hearing	:	28.01.2020
Date of Pronouncement	:	31.01.2020

ORDER

PER BENCH:

The above two appeals filed by the assessee are directed against the separate orders of the CIT(A)-20, New Delhi, relating to assessment year 2014-15. While ITA No.5895/Del/2018 relates to the order of the CIT(A)-16 confirming the order of the AO determining the total income at Rs.28,84,500/-, ITA No.5896/Del/2018 relates to the order of the CIT(A) in confirming the penalty of Rs.10,000/- levied by the AO u/s 271(1)(b) of the IT Act.

2. For the sake of convenience, these appeals were heard together and are being disposed of by this common order.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 30th March, 2015 declaring the total income of Rs.1,98,500/-. The case of the assessee was selected for scrutiny on account of large agricultural income. During the course of assessment proceedings, the AO asked the assessee to justify the huge agricultural income of Rs.26,86,000/- shown by him. Rejecting the various explanations given by the assessee and observing that the assessee was unable to file proof of sale of crops despite repeated opportunities granted to him, the AO treated the agricultural income of Rs.26,86,000/- as -Income from other sources.ø Since there was no compliance from the side of the assessee to the statutory notices issued by the AO, he also levied a penalty of Rs.10,000/- u/s 271(1)(b) of the IT Act.

4. In appeal, the Id.CIT(A) in separate orders upheld the action of the AO on both the counts, i.e., treatment of agricultural income as -Income from other sourcesøand levy of penalty u/s 271(1)(b) of the Act.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The assessee appeared himself to argue his case. He submitted that he is a lawyer by profession and is from Tamil Nadu residing at Delhi. He submitted that while filing the return of income, due to language problem, the counsel, who was

handling the tax matters, made some inadvertent errors for which all these things happened. He submitted that there was also no proper representation before the CIT(A). He accordingly requested that the matter should be restored to the file of the AO with a direction to give one final opportunity to him to substantiate his case so far as the agricultural income is concerned.

7. So far as the levy of penalty u/s 271(1)(b) of the Act is concerned, the assessee submitted that he was down with dengue fever for three months during the relevant period when the assessment proceedings were going on and, therefore, he was unable to appear before the AO either personally or through the authorized representative. Further, on some occasions, the notices issued by the AO were never received by him. He accordingly submitted that the penalty so levied by the AO and confirmed by the CIT(A) should be deleted.

8. The Id. DR, on the other hand, heavily relied on the order of the CIT(A) on both the issues.

9. We have heard the arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. From the various submissions filed by the assessee and on the basis of the arguments advanced by him who represented his own case, we find some force in the argument of the assessee that due to certain communication gap all these things have happened. Considering the totality of the facts of the case and in the interest of justice, we

deem it proper to restore this issue to the file of the AO with a direction to give one final opportunity to the assessee to substantiate his case. The AO shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised in ITA No.5895/Del/2018 are accordingly allowed for statistical purposes.

10. So far as the penalty levied u/s 271(1)(b) of the Act is concerned, we find some force in the argument of the Id. Counsel for the assessee that due to dengue fever, the assessee was unable to appear before the AO. Considering the totality of the facts of the instant case and taking a lenient view in the peculiar facts of the instant case, we are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(b). We, therefore, set aside the order of the CIT(A) and direct the AO to delete the penalty of Rs.10,000/- levied u/s 271(1)(b) of the Act.

11. In the result, ITA No.5895/Del/2018 is allowed for statistical purposes and ITA No.5896/Del/2018 is allowed..

Order pronounced in the open court on 31.01.2020.

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 31st January, 2020.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi