

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'I (2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 156/DEL/2017 ( A.Y 2010-11)**

**ITA No. 157/DEL/2017 ( A.Y 2011-12)**

Devender Kumar C/o. Rajesh Kumar Goyal, Taxation Advisor, Ward No. 12, Near Civil Hospital, Barwala Hisar AWYPK2836L <b>(APPELLANT)</b>	Vs	ITO Ward-1 Hisar  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Rajesh Kumar Goyal, I.T.P</b>
<b>Respondent by</b>	<b>Sh. Jagdish Singh, Sr. DR</b>

<b>Date of Hearing</b>	<b>26.02.2020</b>
<b>Date of Pronouncement</b>	<b>19.03.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the assessee against the orders dated 29/11/2016 passed by CIT(A)-Rohtak, for Assessment Year 2010-11 & 2011-12 respectively.

2. The grounds of appeal are as under:-

**ITA No. 156/DEL/2017 (2010-11)**

1. *The orders of the learned I.T.O. and the Honourable CIT (Appeals) are bad*

*in law and against the facts.*

*2. The first addition confirmed by The Honorable CIT (A) was the addition of disallowance of cash received by the assessee from two of his customers, who could not be produced before the A. O. for recording of their statement due to practical hardship of being their out of station for a long time. All other customers of the assessee except these two persons were produced before the A. O. for recording of their statement. Addition of cash receipts of the assessee from his such customers, statements of whom were recorded by the Assessing Officer, have been deleted by The Hon'ble CIT (A). The said additions were confirmed in appeal not due to detection of any type of concealment of income like failure of assessee to prove the genuineness of the transactions made with said two customers or lack of creditworthiness of the said customers etc., but due to circumstances being out of control of the assessee, as it was not in the hands of the assessee to bring his said two customers before the Authorities.*

*Therefore, keeping in view the fact that the said additions had not been confirmed due to any concealment of income made by the assessee, but due to providing benefit to The Revenue of uncertainties caused by the circumstances. Hence, penalty is not leviable.*

*3. The second addition confirmed by The Hon'ble CIT (A) was the addition of disallowance of an unsecured loan received by the assessee, the lender of which could not be produced for recording of his statement due to practical hardship of being shifting of his residence to an unknown address. The said addition was confirmed in appeal not due to detection of any type of concealment of income, but due to circumstances being out of control of the assessee, as it was not in the hands of the assessee to trace the address of said person. Therefore, keeping in view the fact that the said addition has not been confirmed due to any concealment of income made by the assessee, but due to providing benefit to The Revenue of uncertainties caused by the circumstances. Hence, penalty is not leviable.*

*4. The third addition confirmed by The Honourable CIT (A) was the addition*

*made of life insurance agency commission income earned by the assessee left to be included by him in his income tax return due to oversight. Penalty levied upon this addition is improper and beyond the law & justice for the following two reasons:-*

a) *Income tax at source (TDS) was already deducted by the Life Insurance Co. from whole of the gross commission of Rs.8907/-, while only two-third part of the gross commission is taxable, as an ad hoc deduction of one-third of gross commission is allowable as expense in case of gross commission being up to Rs.60000/-. As TDS already deducted on the said commission income exceeds the tax payable on it, therefore no tax evasion was there. Hence, penalty is not leviable.*

b) *The said addition of commission income has been confirmed by The Hon'ble CIT (A) on estimation basis only. The Ld. Assessing Officer made the addition of whole of the gross commission of Rs.8,907/- assuming no expense has been incurred to earn the same, The Hon'ble CIT (A) confirmed the said addition to the extent of Rs.8007/- estimating the said expense to be of Rs.900/-, while under the provisions of I. T. Act, 1961, an ad hoc deduction of Rs.2969/- (being the one-third of the gross commission income) is allowable, as gross commission doesn't exceed Rs.60000/-. As the said addition is based on estimation only, not on certain basis and addition made on estimation basis doesn't tantamount to concealment of income. Hence, no penalty is leviable on this addition.*

5. *The fourth and last addition confirmed by The Honourable CIT (A) was the addition of household expenses considering it to be inadequate. The said addition was made by The Assessing Officer estimating the household expenses of the assessee to be of Rs. 100000/-, while it was reduced by The Hon'ble CIT (A) estimating the said expenses to be of Rs.78000/-. This addition was made and confirmed on estimation basis only and any addition made only on the estimation basis like inadequacy of household expenses doesn't attract any penal provisions of I. T. Act, 1961. Hence, penalty levied on this addition is not sustainable.”*

**ITA No. 157/DEL/2017 (A.Y. 2011-12)**

1. *The orders of the learned I.T.O. and The Honourable CIT (Appeals) are bad in law and against the facts.*

2. *The first addition confirmed by The Hon'ble CIT (A) was the addition of disallowance of cash received by the assessee from two of his customers, who could not be produced before the A. O. for recording of their statement due to practical hardship of being their out of station for a long time/ illness. All other customers of the assessee except these two persons were produced before the A. O. for recording of their statement. Addition of cash receipts of the assessee from his such customers, statements of whom were recorded by the Assessing Officer, have been deleted by The Hon'ble CIT (A). The said additions were confirmed in appeal not due to detection of any type of concealment of income like failure of assessee to prove the genuineness of the transactions made with said two customers or lack of credit worthiness of the said customers etc., but due to circumstances being out of control of the assessee, as it was not in the hands of the assessee to bring his said two customers before the Authorities.*

*Therefore, keeping in view the fact that the said additions have not been confirmed due to any concealment of income made by the assessee, but due to providing benefit to The Revenue of uncertainties caused by the circumstances. Hence, penalty is not leviable.*

3. *The second addition confirmed by The Hon'ble CIT (A) was the addition of disallowance of an unsecured loan received by the assessee, the lender of which could not be produced for recording of his statement due to practical hardship of being shifting of his residence to an unknown address. The said addition was confirmed in appeal not due to detection of any type of concealment of income, but due to circumstances being out of control of the assessee, as it was not in the hands of the assessee to trace the address of said person. Therefore, keeping in view the fact that the said addition has not been confirmed due to any concealment of income made by the assessee, but*

*due to providing benefit to The Revenue of uncertainties caused by the circumstances. Hence, penalty is not leviable.*

4. *The third and last addition confirmed by The Honourable CIT (A) was the addition made of life insurance agency commission income earned by the assessee left to be included by him in his income tax return due to oversight. Penalty levied upon this addition is improper and beyond the law & justice for the following two reasons:-*

a) *Income tax at source (TDS) was already deducted by the Life Insurance Co. from whole of the gross commission of Rs.5232/-, while only two-third part of the gross commission is taxable, as an ad hoc deduction of one-third of gross commission is allowable as expense in case of gross commission being up to Rs.60000/-. As TDS already deducted on the said commission income exceeds the tax payable on it, therefore no tax evasion was there. Hence, penalty is not leviable.*

b) *The said addition of commission income has been confirmed by The Hon'ble CIT (A) on estimation basis only. The Ld. Assessing Officer made the addition of whole of the gross commission of Rs.5232/- assuming no expense has been incurred to earn the same, while under the provisions of I. T. Act, 1961 an ad hoc deduction of Rs. 1744/- (being the one-third of the gross commission income) is allowable, as gross commission doesn't exceed Rs.60000/-. As the said addition is based on estimation only, not on certain basis and addition made on estimation basis doesn't tantamount to concealment of income. Hence, no penalty is leviable on this addition."*

3. Issues in both the appeals are identical, therefore, we are taking brief facts of Assessment Year 2010-11. Return declaring income of Rs.1,53,080/- was filed on 21.07.2011 which was processed u/s 143(1) of I.T. Act, 1961. Thereafter, the case of the assessee was reopened u/s 147 of Income Tax Act,1961 and assessment was framed u/s 143(3)/147 of I.T. Act,1961 vide order dated 24.01.2013 at income of Rs. 9,46,320/- after making certain additions to the taxable income of the assessee. The assessee preferred appeal

before the CIT (A) against the assessment order dated 24.01.2013 passed u/s 143(3)/147 of I.T.Act,1961. The CIT(A) vide order dated 20.08.2014 deleted certain additions and confirmed some additions made by the Assessing Officer in order dated 24.01.2013. The Income after relief given by CIT (A) is as under:-

Assessed income	Rs.946320/-
less:- Net relief given by CIT (A) vide order dt. 20.08.2014	Rs.321230/-
Balance Assessed Income	Rs.625086/-

In the meanwhile the penalty under Section 271(1)(c) of the Income Tax Act, 1961 was also imposed on the ground that the assessee is in default for concealing the particulars of his income to the extent of Rs. 4,71,506/- (income after relief by the CIT(A) minus returned income i.e. Rs. 6,25,086/- minus Rs. 1,53,580/-). Thus, the minimum penalty @ 100% of the taxed evaded was levied at Rs. 94,272/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that in the instant case, addition to total income of assessee were not made/confirmation by the Assessing Officer /CIT(A) for deduction of any concealment/inaccuracy of particulars of his income. The said additions were made/confirm nearly for the reason of non availability of some third parties called upon by the authorities for recording of their statements. The Ld. AR further submitted that disallowance of cash receipts from some of the customers and disallowance of receipts of unsecured loans from the lenders and customers in bank account through cheques merely for the reason of non possibility of presence of such customers of lenders before the Assessing Officer for recording of their statement does not tantamount to willful furnishing of inaccurate particulars of income or concealment of particulars of income within the meaning of Section 271(1)(c) of the Act. The

Ld. AR relied upon the decision of the Mumbai Tribunal in case of Shri Ajay Loknath Lohia Vs. ITO (ITA No. 2998/Mum/2017 order dated 5/10/2018).

6. The Ld. DR relied upon the assessment order, penalty order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. From the perusal of the order of the CIT(A) it can be seen that there is no detail finding given by the CIT(A) as regards to how the concealment of particular of income relating to the confirmation in respect of unsecured loan/receipt of cash and insurance commission comes within the purview of Section 271(1)(c). Merely, holding that confirmation in respect of unsecured loan, receipt of cash and insurance commission clearly fall within the ambit of concealment is not sufficient. The CIT(A) also not considered the submissions of the Assessee during the appellate proceedings. Therefore, it will be appropriate to remand back this issue of unsecured loan, receipt of cash and insurance commission to the file of the CIT(A) for deciding it with the reasoned order. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

8. As regards to ITA No. 157/Del/2017 for A.Y. 2011-12, the same is identical and here also the CIT(A) has not given any detail finding and also not considered the submissions of the assessee. Therefore, it will be appropriate to remand back this issue of unsecured loan, receipt of cash and insurance commission to the file of the CIT(A) for deciding it with the reasoned order. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

9. In result, both the appeals of the assessee are partly allowed for statistical purpose.

**Order pronounced in the Open Court on 19<sup>th</sup> March, 2020.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 19/03/2020  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELH

Date of dictation	27.02.2020
Date on which the typed draft is placed before the dictating Member	28.02.2020
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	19.03.2020
Date on which the final order is uploaded on the website of ITAT	19.03.2020
Date on which the file goes to the Bench Clerk	19.03.2020
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	