

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2434/Del/2017 : Asstt. Year : 2010-11

ITA No. 2435/Del/2017 : Asstt. Year : 2011-12

M/s B. R. Associates Pvt. Ltd., Rajiv Saxena & Co. (Advocates & Solicitors), 318, Pocket-D, Mayur Vihar-II, Delhi-110091	Vs	ACIT, Central Circle-16, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACB1067H		

Assessee by : Ms. Sumangla Saxena, Adv.

Revenue by : Sh. Rajesh Kumar, Sr. DR

Date of Hearing: 17.02.2020

Date of Pronouncement: 05.05.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-27, New Delhi dated 27.02.2017.

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2. Following grounds have been raised by the assessee:

"1. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in confirming the penalty u/s 271(1)(c) of the IT Act on account of Concealed income of Rs.5,18,590/-.

(a) She has failed to appreciate that Assessing Officer has levied the penalty mere on the ground of filing

inaccurate particulars, while no particulars were found by him which were filed inaccurate.

(b) She has not gone into the merits of the case and merely referred to the applications of the appellant for keeping the penalty proceedings in abeyance.

(c) She has failed to understand that the Assessing Officer has levied the penalty on the basis of additions made during assessment without appreciating that the additions made u/s 153A were itself bad in law as the same were made without referring to any incriminating material.

(d) She has failed to understand that merely because AO did not accept exempted income without referring to any material brought on record, penalty cannot be levied on the basis of disallowance u/s 10(38) of the Act.

2. That the penalty order made u/s 271(1)(c) as well as the order of the CIT(A) is required to be quashed as they were made without providing proper, reasonable and sufficient opportunity to the assessee, thus defying principles of natural justice."

3. The moot issue to be adjudicated is whether penalty levied by the AO and confirmed by the Id. CIT (A) is legally tenable when the addition based on which the penalty levied stands deleted by the ITAT in the further appeal.

4. The AO made addition of Rs.16,78,276/- on account of "Short Term Capital Gains" against the amount declared under the head "Long Term Capital Gains". The Co-ordinate Bench of ITAT vide order dated 30.06.2014 (ITA No. 2003/Del/2013) in the case of the assessee has deleted the addition made on account of Short Term Capital Gains. The matter was further remanded back to the AO for examination of re-investment of

LTCG in the new asset. Since as on date, the quantum addition stands deleted by the Tribunal, the penalty levied on such income is hereby set aside with liberty to revive the proceedings based on the outcome of the re-investment of the Long Term Capital Gains.

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5. Following grounds have been raised by the assessee:

"1. That the Learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in confirming disallowance of Rs.1,64,000/- made by the AO while computing Short Term Capital Gain declared by the assessee because:

(a) She has not made any effort to understand that property sold was old property at Karol Bagh, Dariwalan, Sidhipura, New Delhi an its repair was essential for selling the property.

(b) She has further failed to appreciate details of account payee cheques paid to various persons for repairing the building which was claimed against Short Term Capital Gain.

2. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in confirming the addition of Rs.55,115/- made by the AO u/s 14A of the IT Act by applying Rule 8D of the IT Rules because:

(a) She has failed to appreciate that disallowance u/s 14A cannot exceed the exempted income.

(b) The assessee itself has made the disallowance of Rs.9,054/- which was actually incurred to earn the income."

6. The short issue of the appeal is that the assessee has declared Short Term Capital Gain of Rs.4,89,099/- on house property after claiming repair expenses of Rs.1,64,000/-. During the assessment proceedings, the repair expenses has

been disallowed owing to non-furnishing of the details of such expenses. The Id. CIT (A) confirmed the disallowance made by the AO on the grounds that even during the appellate proceeding, the assessee was unable to justify the claim by producing relevant documentary evidence in support of repair expenses. Before us during the arguments, it was argued that the Id. CIT (A) failed to appreciate the details of account payee cheques paid on account of repairs to various persons. It was argued that the property sold was old property and the repairs were essential for selling such property. The Id. DR supported the orders of the authorities below.

7. Heard the arguments of both the parties and perused the material available on record. From the submissions, we find that the assessee has made payment to four parties on account of the repairs undertaken in the property which has been sold for which the Short Term Capital Gains have been offered to tax. The details are as under:

<i>S. No.</i>	<i>Date of Payment</i>	<i>Cheque No.</i>	<i>Party Name</i>	<i>Amount</i>
1.	05.07.2010	119091	Mr. Mohan Sharma	42,000/-
2.	05.07.2010	119092	Mr. Anil Kumar	40,000/-
3.	05.07.2010	119093	Mr. Neeta Sharma	40,000/-
4.	05.07.2010	209899	Mr. Yogesh Kumar	42,000/-
<i>Total</i>				<i>1,64,000/-</i>

8. The Id. CIT (A) would have been inadvertently ignored the payments made while confirming the disallowance in absence of anything contra brought by the revenue about the payment of the repair charges to the four persons mentioned above. Hence,

we hereby direct the disallowance made by the revenue is liable to be deleted.

Addition u/s 14A:

9. Straight facts of the case are that the assessee earned dividend income of Rs.29,357/- out of the investments made of Rs.1.34 crores. The AO disallowed total amount of Rs.64,169/- under Rule 8D of the Income Tax Rules, 1962 against the disallowance made by the assessee of Rs.9,054/-. Keeping in view, the established judicial pronouncements on the issue of disallowance u/s 14A and keeping in view the fact that the provisions of Section 14A(2) have not been adhered to by the revenue and keeping in view the fact that the assessee *suo moto* has disallowed nearly 30% of the exempt income received, we find that the invocation of Rule 8D in this case is legally not tenable. The disallowance made is directed to be deleted. In the result, the appeal of the assessee is allowed.

10. In the result, the appeal in ITA No. 2434/Del/2017 of the assessee is allowed for statistical purpose and the appeal in ITA No. 2435/Del/2017 of the assessee is allowed.

Order Pronounced in the Open Court on 05/05/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 05/05/2020

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR