

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.906 & 907/Ind/2019
Assessment Years: 2012-13 & 2013-14

Smt. Surinder Kaur, E-1/165, Arera Colony, Bhopal	Vs.	ACIT (Central)-2, Bhopal
(Appellant)		(Revenue)
PAN ABDPK7814J		

Appellant by	Shri Ashish Goyal, Adv
Revenue by	Shri R.P. Mourya, Sr. DR
Date of Hearing	10.06.2020
Date of Pronouncement	11.06.2020

ORDER

PER MANISH BORAD, AM.

These appeals are filed by the assessee against the order of Id. CIT(A)-3, Bhopal dated 16.08.2019 pertaining to Assessment year 2016-17. The assessee has raised following grounds of appeal:

2. Assessee has raised following grounds of appeal;

ITA No.906/Ind/2019
Assessment Year 2012-13

On the facts and the circumstances of the case:-

1.The Id CIT(A) was not justified in sustaining the Penalty order u/s 271(1)(c), which is bad-in-law, void-ab-initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2.That the Id CIT(A) was not justified in sustaining the levy of Penalty u/s 271(1)(c) amounting to Rs. 3,75,000/- without considering the facts and submissions of the case.

3.That the Id CIT(A) was not justified in sustaining the penalty on undisclosed Investment of Rs.11,47,348/- when the addition was deleted by hon'ble ITAT, Indore bench vide order no ITA 98/2017 dated 23.08.2019.

4.That the Id CIT(A) was not justified in dismissing the appeal on account of nonappearance, without considering the fact that the notice for hearing on different dates were served at the old address and not at the address mentioned in Form 35. Thus, opportunity of being heard was not provided.

The appellant carves leave to add, amend or modify any of the grounds of appeal.

ITA No.907/Ind/2019
Assessment Year 2013-14

1.The Id CIT(A) was not justified in sustaining the Penalty order u/s 271AAB, which is bad-in-law, void-ab-initio, barred by limitation, illegal,

contrary to the facts and circumstances of the case, liable to be annulled.

2.That the Id CIT(A) was not justified in sustaining the levy of Penalty u/s 271AAB amounting to Rs. 75,000/- without considering the facts and submissions of the case.

3.That the Id CIT(A) was not justified in dismissing the appeal on account of nonappearance, without considering the fact that the notice for hearing on different dates were served at the old address and not at the address mentioned in Form 35. Thus, opportunity of being heard was not provided.

The appellant carves leave to add, amend or modify any of the grounds of appeal.

3. At the outset Ld. Counsel for the assessee submitted that the quantum addition on which the penalty has been levied u/s 271(1)(c) of the Act u/s 271AAB of the Act for Assessment Year 2012-13 and 2013-14 stands deleted by the Tribunal vide ITA No.98/Ind/17 dated 23.8.2019 and ITA No.273/Ind/17 dated 14.1.2020. He further submitted that though the impugned orders are *ex-parte* but still looking to the fact that quantum addition has itself been deleted, the penalties levied may be deleted.

4. Per contra Ld. Departmental Representative though supported the orders of lower authorities but could not controvert the fact that

the very basis of levying the penalty i.e. quantum addition has been deleted by the Tribunal.

5. We have heard rival contentions and perused the records placed before us. The instant two appeals are against the order of Ld. CIT(A) confirming the levy of penalty at Rs.3,75,000/- and Rs.75,000/- u/s 271(1)(c) and 271AAB of the Act respectively. These penalties were levied on the addition Rs.11,47,348/- and Rs.2,27,609/- for Assessment Year 2012-13 and Assessment Year 2013-14 respectively. We also find that the Tribunal vide ITA No.98/Ind/17 dated 23.8.2019 and ITA No.273/Ind/17 dated 14.1.2020 has deleted the quantum addition of Rs. 11,47,348/- and Rs.2,27,609/- for Assessment Year 2012-13 and Assessment Year 2013-14 respectively. Since the very basis of levying the penalty stands deleted the penalties so levied do not deserve to stand for since the foundation of the levying penalty i.e. the addition stands deleted.

6. Though the order of Ld. CIT(A) is *ex-parte* and nothing has been dealt on merits, but in the given circumstances, we find no reason to set aside the issues raised in these instant appeals to Ld.

ITA No.906&907/Ind/2019
Smt. Surinder Kaur

CIT(A). Therefore looking to the fact that quantum addition has itself has been deleted, we delete the penalty of Rs.3,75,000/- and Rs.75,000/- levied by the Ld. A.O u/s 271(1)(c) and 271AAB of the Act for Assessment Year 2012-13 and 2013-14 respectively. Thus the order of the Ld. CIT(A) is set aside and grounds raised in both the appeals of the assessee in ITA No./906/Ind/2019 and ITA No.907/Ind/2019 are allowed.

6. In the result both the appeals of the assessee in ITA No./906/Ind/2019 and ITA No.907/Ind/2019 stands allowed.

The order pronounced in the open Court on 11.06.2020.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated : 11 June, 2020

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore