

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 3042/DEL/2019 ( A.Y 2008-09)**

**(THROUGH VIDEO CONFERENCING)**

Bhardwaj Metal (India) Prop. Ved Prakash 5852, Basti Harphool Singh, Sadar Bazar, Delhi - 110006 AADPV4179J <b>(APPELLANT)</b>	Vs	ITO, Ward-63(3), Room No. 2102, J. L. Nehru Marg, Civic Centre, New Delhi - 110002. <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Akshit Goel, CA</b>
<b>Respondent by</b>	<b>Sh. Ajay Kumar, Sr. DR</b>

<b>Date of Hearing</b>	<b>19.11.2020</b>
<b>Date of Pronouncement</b>	<b>25.11.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 14/03/2019 passed by CIT(A)-20, New Delhi for Assessment Year 2008-09.

2. The grounds of appeal are as under:-

*“1. On the facts and circumstances of the case, the order passed by the Learned Commissioner of Income Tax (Appeals) {CIT(A)} is bad both in the eyes of law and on facts.*

*2. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad in law having been passed ex parte without giving the*

*assessee an appropriate and adequate opportunity of being heard in clear violation of the principles of natural justice.*

*3. On the facts and circumstance of the case, the Learned CIT(A) has erred both on facts and in laws in confirming the action of the AO levying penalty u/s 271(1)(c) of the Income-tax Act, 1961*

*4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming penalty of Rs. 3,50,870/- levied by AO u/s 271(1)(c) of the Act on the addition of Rs. 11,35,484/- made by the AO on account of addition made under section 69C alleging the purchases made by the assessee as bogus.*

*5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the penalty and rejecting the contention of the assessee that on an addition made on the basis of estimation no penalty under section 271(1)(c) can be levied.*

*6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming penalty levied by AO despite the fact that the additions itself are not tenable in law.*

*7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty levied by AO despite the fact that the penalty was levied by the AO without giving any finding as to the merits of the case on concealment of income as well as furnishing of inaccurate particulars of income.*

*8. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the penalty proceedings are independent proceedings, as such mere addition does not lead to levy of penalty.*

*9. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty levied despite the fact that the notice issued by AO u/s 274 read with section 271(1)(c) of the Act does not specify the charge against the assessee as to whether it is for*

*concealment of particulars of income or furnishing of inaccurate particulars of income.*

*10. On the facts and circumstances of the case, the learned CIT(A) has erred both the facts and in law in confirming the order passed by the AO despite the fact that the AO has passed the penalty order without specifying the allegation whether the penalty is being levied for concealment or for furnishing of inaccurate particulars of income.*

*11. The appellant craves leave to add, amend, or alter any of the grounds of the appeal.”*

3. The assessee is engaged in the business of trading of metal scrap under the name of Bhardwaj Metal (India). The assessment was completed u/s 143(3)/147 of the Income Tax Act, 1961 on 18.03.2016 at an income of Rs. 12,68,350/- against the return of income of Rs. 1,32,870/- by making addition of Rs. 11,35,484/- on account of bogus purchases. The penalty order dated 29.09.2016 was passed by the Assessing Officer in respect of concealment of income thereby levying penalty of Rs. 3,50,865/-.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) has not given the appropriate opportunity of hearing to the assessee to represent his case.

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

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has not appeared before the CIT(A) and the order is passed ex-parte. From the perusal of the order of the CIT(A), it can be seen that the CIT(A) has not given any categorical finding on merit of the case. Therefore, it will be appropriate to give the opportunity of

hearing to the assessee before the CIT(A). Hence, we are remanding back the entire issue to the file of the CIT(A) to be decided on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. We further direct the assessee to co-operate the revenue authorities for just and proper disposal by remaining present on the hearing dates and submit the relevant documents, otherwise, the revenue is at liberty to dismiss the appeal of the assessee ex-parte on merit. The appeal of the assessee is partly allowed for statistical purpose.

8. In result, the appeal filed by the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on this 25th Day of November, 2020.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 25/11/2020

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

