

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.3609/Del./2019
Assessment Year 2012-13

Sanjay Tandon D/156, Batla Apartments, 43, IP Extn., Patparganj, Delhi. PAN No. ACUPT6214B (Appellant)	vs.	CIT(A)-37 New Delhi. (Respondent)
---	-----	---

For Assessee :	Shri Nitin Kumar, CA
For Revenue :	Shri Prakash Dubey, Sr. DR

Date of Hearing :	05.01.2021
Date of Pronouncement :	05.01.2021

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-37, New Delhi dated 22.09.2017 for AY 2012-13 levying the penalty u/s 271(1)(c) of the IT Act.

2. I have heard Ld. Representatives of both the parties and perused the material on record.

3. Briefly the facts of the case are that AO passed the assessment order dated 05.03.2015 u/s 143(3) of the IT Act and made addition of unexplained cash deposit of Rs. 8,01,000/-. The Ld. CIT(A) vide order dated 20.03.2017 not

only confirm the addition but also enhanced the addition by Rs. 2,85,000/-. The Ld. CIT(A) vide impugned order levied the penalty u/s 271(1)(c) of the IT Act.

4. Ld. Counsel for assessee submitted that the assessee preferred appeal against the order of the Ld. CIT(A) dated 20.03.2017 before the Tribunal, whereby addition on account of cash deposit and enhancement was confirmed. The Tribunal in ITA No. 2970/Del/2017 dated 08.01.2018 deleted both the additions and allowed the appeal of the assessee. He has, therefore, submitted that since quantum addition has been deleted, therefore, penalty may be cancelled. He has prayed that since assessee inadvertently filed appeal against the order of the Ld. CIT(A) before Ld. CIT(A) himself therefore in such circumstances delay in filing the appeal may be condoned. On the other hand, Ld. DR did not dispute the above contention of the assessee that quantum addition has been deleted.

5. I have considered the submissions of both the parties. Since the Ld. CIT(A) levied the penalty vide impugned order dated 22.09.2017, therefore, the appeal should have been filed before the Tribunal. The assessee has wrongly filed appeal before Ld. CIT(A) against the order dated 22.09.2017 and ultimately on realization the mistake withdrawal the appeal before Ld. CIT(A) vide order dated 15.02.2019. In such circumstances, assessee has a *bona fide* explanation in not

filing the appeal within the period of limitation. The delay in filing the appeal is condoned. Since quantum addition has been deleted by the Tribunal, therefore, there is no basis left for levy the penalty against the assessee.

6. I, accordingly, set aside the orders of authorities below and cancel the penalty.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open Court on 05.01.2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 05.01.2021

*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.