

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "A" NEW DELHI]**

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

**I.T.A. No. 2652/Del/2016 (A.Y 2009-10)
(THROUGH VIDEO CONFERENCING)**

<p style="text-align: center;">Abhishek Kumar, C/o. G. K. Kedia & Co., 914, Naurang House, 21-Kasturba Gandhi Marg, New Delhi – 110 001. PIN : ALQPK6745F (APPELLANT)</p>	Vs	<p style="text-align: center;">Income Tax Officer, Ward : 1 (3), Gurgaon. (RESPONDENT)</p>
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Assessee by :	Ms. Kanishka Aggarwal, CA
Department by:	Shri Bhopal Singh, Sr. DR

Date of Hearing	12.05.2021
Date of Pronouncement	27.05.2021

O R D E R

PER SUCHITRA KAMBLE, JM :

This appeal is filed by the assessee against order dated 17/02/2016 passed by CIT (Appeals)-I, Gurgaon, for assessment year 2009-10.

2. The grounds of appeal are as under:-

1. " That on the facts and circumstances of the case and law on the point, the Penalty Order dated 26.06.2012 for the A.Y. 2009-10 passed by the Ld. Assessing Officer raising a demand of Rs. 1,48,553 is against the principles of natural justice and Hon'ble CIT (A) has erred in partly confirming the demand of penalty.

2. That on the facts and circumstances of the case and law on the point, the penalty order under section 271(l)(c) of the Income Tax Act, 1961 dated 26.06.2012 passed by the Ld. Assessing Officer is null and void as it is not preceded by proper service of show cause notice u/s 274 read with section 271 (l)(c) of the Income Tax Act, 1961 and Hon'ble CIT (A) has erred in not adjudicating this ground of appeal

on merits.

3. Penalty was imposed on the basis of an ex-parte assessment order u/s 144 of the Income Tax Act, 1961 dated 05.12.2011 which itself is in appeal before your goodselves. This appeal petition should be disposed off after disposal of appeal against such ex-parte assessment order u/s 144 of the Income Tax Act, 1961.

4. The appellant craves leave to add to, alter, modify, substantiate, delete and /or to rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises. “

3. The assessee filed his return of income on 06.07.2009 declaring income of Rs. 8,93,320/-. The assessment was finalized u/s 144 vide assessment order dated 05.12.2011 at an income of Rs. 12,77,947/- after making following additions:-

- | | | | |
|-----|--|---|---------------|
| (a) | Non-furnishing of proof towards deduction
Claimed under Chapter – VIA | : | Rs. 99,948/- |
| (b) | Addition on account of Rental Income | : | Rs.2,84,679/- |

In the meanwhile the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 was initiated on the additions made by the Assessing Officer and accordingly, notice u/s 271 read with Section 274 was issued to the assessee for levy of penalty u/s 271(1)(c) of the Act on 05.12.2011. However, since the assessee has not responded to the notices and not attended the proceedings, the Assessing Officer imposed penalty of Rs. 1,48,553/- for concealing the true particulars of income vide penalty order dated 26.06.2012.

4. Being aggrieved by the Penalty 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 the quantum appeal being ITA No. 1035/Del/2019 of the assessee was heard on 06.01.2020 by the Tribunal and the matter was remitted back to the file of the Assessing Officer for the

additions upon which penalty was initiated. Therefore, the Ld. AR submitted that the penalty does not survive.

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

7. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has passed consolidated order for quantum as well as for the penalty under Section 271(1)(c) of the Act vide order dated 17.02.2016. In the quantum appeal, the Tribunal vide order dated 06.01.2020 held as under:

“5.I have heard both the parties and perused the records especially the orders of the revenue authorities. I find considerable cogency in the contention of the Ld. Counsel for the assessee that AO as well as Ld. CIT(A) has not given sufficient opportunity to the assessee for substantiating his claim before them. I further find force in the contention of the Ld. Counsel for the assessee that ground no. 4 to 7 raised in this appeal require thorough investigation and examination at the level of the Assessing Officer. Hence, in the interest of justice, I set aside the ground no. 4 to 7 to the file of the Assessing Officer for thorough investigation/examination and then decide the same afresh, in accordance with law, after giving adequate opportunity of being heard to the assessee with the direction to consider each and every evidence/document to be filed by the assessee. Assessee is at liberty to file any evidence/document before the Assessing Officer for substantiating his claim and will not seek any unnecessary adjournment.”

Since the additions on which penalty was imposed by the Assessing Officer and sustained by the CIT(A) has been remanded back to the file of the Assessing Officer for thorough investigation/examination to decide the same afresh, therefore, the penalty does not survive at this juncture. Hence, we direct the Assessing Officer to initiate fresh penalty proceedings after

completion of fresh Assessment proceedings according to the law and provisions of penalty. Hence, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on this 27th Day of May, 2021.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

Dated : 27/05/2021

MEHTA

Copy forwarded to:-

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

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

ASSISTANT REGISTRAR
ITAT NEW DELHI