

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SANJAY GARG, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.4478/Del/2018
(Assessment Year : 2011-12)

CAP CAB India Ltd., 82 B Madhuban Enclave, Near Madipur Metro Station Delhi PAN : AACCC 1016 B (APPELLANT)	Vs.	ITO Ward – 5(3) New Delhi (RESPONDENT)
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Assessee by	Shri Sachin Kumar, C.A.
Revenue by	Ms. Nidhi Srivastava, CIT-D.R.

Date of hearing:	05.10.2021
Date of Pronouncement:	05.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 27.03.2017 of the Commissioner of Income Tax (Appeals)-2, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. AO was in receipt of information from the ITD system of the Department that assessee had made cash deposits in his bank account. AO has noted that assessee did not file the return of income for A.Y. 2011-12. AO therefore issued notice u/s 148 of the Act. AO thereafter in the assessment order passed u/s 147/144 of the Act on 30.03.2015 made addition of Rs.2,05,50,008/- by applying Gross Profit @ 8.13% on the amount of aggregate credits of Rs.25.27 crore (rounded off) in two bank accounts namely ICICI Bank & Canara Bank. Aggrieved by the quantum addition made by AO, assessee carried the matter before the CIT(A). CIT(A) vide order dated 27.03.2017 in Appeal No.241/15-16 enhanced the addition of total income to Rs.24,55,30,577/-. On such enhancement in income, CIT(A) vide penalty order passed u/s 271(1)(c) of the Act dated 31.03.2017 imposed penalty of Rs.8,13,93,386/- u/s 271(1)(c) of the Act. Aggrieved by the penalty order of CIT(A), assessee is now in appeal before us and had raised the following grounds:

- “1. *The impugned penalty order dated 31-03-2017 passed by the Ld. Commissioner of Income Tax (Appeals)-2, New Delhi [hereafter the Ld. CIT(A)] is invalid and untenable, inter alia, because any opportunity of hearing was not provided to the Assessee.*
2. *The impugned penalty order is not maintainable inter alia because the notice u/s 271(1)(c) of the Income Tax Act, 1961 (hereafter the Act) as well as the impugned penalty order takes all the possible grounds and did not specify the precise or exact default committed by the Assessee.*
3. *The instant penalty order is bad in law and liable to be quashed, inter alia, because the assessment order dated 30-03-2015 made u/s 144 of the Act, which is the foundation for the instant penalty order, is without jurisdiction, null and void ab initio, inter alia, because:*

- (1) *The initiation of the proceedings under section 147 of the Act is without satisfying and complying with the pre-requisite conditions mandated by Section 147, 148, and 151 of the Act; which are sine qua non for assumption of valid jurisdiction to initiate the proceedings under section 147 of the Act and complete the assessment and therefore, the notice dated 24-02-2014 issued under section 148 of the Act, by the Ld. AO is bad in law, null and void ab-initio and deserves to be annulled, inter alia, because:*
 - (a) *The Ld. AO had no 'reason to believe' to initiate the assessment proceedings under section 147 of the Act, the proceedings were initiated on highly misconceived grounds, in the nature of pretence and without any justification and on assumptions, without specifying the details or nature of the transactions and on wrong facts.*
 - (b) *Any notice under section 148 of the Act was not served upon the Assessee.*
 - (c) *The notice dated 24-02-2014 issued under section 148 of the Act is invalid, inter alia, because on that date the assessment proceedings, initiated by issuing various notices dated 25-07-2013, etc. issued under section 142(1) of the Act by the Id. AO, were pending.*
- (2) *The Ld. AO did not make any addition on the ground of cash deposit in bank account, which as per assessment order is the reason for initiating action u/s 147 of the Act.*
- (3) *The Ld. AO has no pecuniary jurisdiction.*
4. *The Ld. CIT (A) erred in levying penalty of Rs. 8,13,93,386/- u/s 271(1)(c) of the Act.*
5. *The observations of the Ld. CIT (A) are against the facts of the case.*

6. *The penalty order passed by the Ld. CIT (A) is against the facts of the case as well as law.”*

4. Before us, at the outset, Learned AR submitted that the impugned penalty has been levied on the enhancement of income made by CIT(A). He submitted that against the enhancement made by CIT(A), assessee had carried the matter before the Tribunal. Tribunal vide order dated 27.01.2020 in ITA No.4347/Del.2018 has restored the matter back to the file of CIT(A). He therefore submitted that since the quantum addition had been set aside to CIT(A), the present penalty appeal does not survive and it may also be remitted back to CIT(A).

5. Learned DR did not object the prayer of restoring the penalty order back to CIT(A).

6. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to levy of penalty u/s 271(1)(c) of the Act. We find that the quantum enhancement which was made by CIT(A) and which is the basis of the impugned penalty has been restored to the file of CIT(A) by the Co-ordinate Bench of Tribunal for deciding the issue afresh as per the directions contained therein. Sub-clause (iii) of Section 271(1) contemplates that if it is held that the assessee concealed the particulars of income or furnished inaccurate particulars of income, then in addition to tax, if any, payable by him, a sum which shall not be less than, but shall not exceed three times, the amount of tax sought to be evaded by the reason of the concealment of particulars of his

income or furnishing of inaccurate particulars of income, be directed to be paid. Meaning thereby, the penalty equivalent to the tax sought to be evaded or three times of the tax is to be computed on the addition for which a charge is to be proved that the assessee has concealed the particulars of this income. The addition in the present case is yet to be made. In such a situation, we are of the view that there cannot be any question of computing the penalty unless the amount is determined on which the allegation of evading tax can be levied. We therefore set aside the issue of penalty also to the file of CIT(A) and it is left to the wisdom of CIT(A) who may initiate or not initiate penalty proceedings after finalizing of quantum addition if any made to the income of the assessee. **Thus ground of assessee is allowed for statistical purposes.**

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05.10.2021

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Date:- 05.10.2021

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Copy forwarded to:

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

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI