

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.5044/Del/2018
Assessment Year: 2011-12

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| Smt. Ranju Sayall, 6, Jain Bhawan, 12, Bhagat Singh Marg, New Delhi | Vs. | ACIT, Central Circle-8, New Delhi |
| PAN :BQNPS3663M | | |
| (Appellant) | | (Respondent) |

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|---------------|------------------------|
| Appellant by | Sh. Vijay Gupta, CA |
| Respondent by | Sh. Rohit Anand, Sr.DR |

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| Date of hearing | 06.10.2021 |
| Date of pronouncement | 14.10.2021 |

ORDER

PER O.P. KANT, AM:

The present appeal by the assessee is directed against order dated 23.05.2018 passed by the learned Commissioner of Income Tax (Appeals)-24, New Delhi [in short 'the learned CIT(A)'] for the assessment year 2011-12 raising the grounds as under:

- The Learned Commissioner of Income-tax (Appeals) ('Ld. CIT(A)') has grossly erred both on facts and in law in confirming the action of the Learned Assessing Officer ('Ld. AO') of imposing penalty u/s 271(1)(c) of the Act, without considering the fact that no opportunity of being heard was given to the Appellant.*
- Without prejudice to Ground No. 1, the Ld. CIT (A) has grossly erred both on facts and in law in confirming the penalty order*

passed by the Ld. AO, without acknowledging the fact that the quantum appeal was still pending before the Hon'ble ITAT and that there was no requirement to pass the penalty order till the disposal of appeal proceedings before the ITAT.

3. *Without prejudice to Ground No. 1 & 2 above, the Ld. CIT (A) has grossly erred both on facts and in law in confirming the penalty imposed by Ld. AO by holding that the assessee has provided inaccurate particulars of its income, in complete ignorance of the fact that the quantum appeal is still pending to be adjudicated by Hon'ble ITAT.*
4. *The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.*

2. At the outset, the learned counsel for the assessee submitted that the quantum addition, in respect of which the penalty has been levied, has been restored back to the file of the learned CIT(A) for deciding the appeal afresh. It is further submitted that as the quantum addition has already been sent back to the file of the learned CIT(A), the present appeal for levy of penalty under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') cannot survive and accordingly the same may be restored back to the file of the learned CIT(A).

2. On the contrary, the learned DR did not controvert the facts.

3. We have heard the rival submissions of the parties and perused the relevant material on record. We find that the Assessing Officer has levied the penalty in respect of the cash and jewellery found and addition for which enhanced by the learned CIT(A) to Rs. 35,69,810/-. Further, we find that in quantum proceeding, the Tribunal in ITA No. 3927/Del/2015 has restored this issue to the learned CIT(A) for deciding the appeal afresh. The relevant part of the order of the Tribunal is reproduced as under:

“7. We have heard rival submission of the parties and perused the relevant material on record. In our opinion, the assessee is a non-resident and, if she could not file documentary evidence in support of her claim before the lower authorities, in the interest of substantial justice, one more opportunity can be granted to the assessee to file required documentary evidences. In view of the facts and circumstances of the case, we feel it appropriate to restore both the issues of addition of the jewelry and cash found to the file of the Ld. CIT(A) for deciding afresh with the direction to the assessee to produce all the necessary evidences in support of her claim on first date of hearing before the learned CIT(A). The learned CIT(A) is also directed to examine claim of the assessee for benefit of CBDT Instruction (supra) in view of the decisions cited by the learned counsel of the assessee. It is needless to mention that both the assessee as well as the Assessing Officer shall be afforded adequate opportunity of being heard. The grounds of the appeal raised by the assessee are accordingly allowed for statistical purposes.”

4. In view the above facts, as the quantum addition, in respect of which penalty has been levied by the Assessing Officer, has already been restored back to the file of the learned CIT(A), the impugned penalty levied by the Assessing Officer cannot survive. Accordingly, we restore the present appeal to the file of the learned CIT(A) for deciding afresh after passing order in quantum proceeding.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 14th October, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 14th October, 2021.

RK/-(DTDC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi