

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

SMT. DIVA SINGH, JUDICIAL MEMBER

**I.T.A No. 8180/Del/2019
(ASSESSMENT YEAR: 2009-10)**

Rajesh Tyagi Ch. No. 206-207, Ansal Satyam RDC, Raj Nagar, Ghaziabad, Uttar Pradesh. PAN No. ACQPT1046F	Vs.	INCOME TAX OFFICER Ward 2(2) Ghaziabad.
(Appellant)		(Respondent)

Appellant By	None
Respondent by	Shri Sanjiv Mahajan, Sr. DR

Date of Hearing	18.10.2021
Date of Pronouncement	20.10.2021

Hearing conducted via Webex

ORDER

The present appeal has been filed by the assessee, wherein the correctness of the order dated 31.07.2019 of CIT(Appeals), Ghaziabad pertaining to 2009-10 assessment year is assailed.

2. At the time of hearing, no one was present on behalf of the assessee although an adjournment application seeking time had been filed. However, considering the material available on record and after hearing the Ld. Sr. DR it was deemed appropriate to reject the adjourn application and proceed with the appeal ex parte qua the assessee appellant on merits. The said view was taken in the context of the prayer made by the assessee by way of ground no. 1 raised in the present appeal. By the remaining grounds the assessee assails the merits of the order passed wherein penalty sustained by the AO has been confirmed.

3. Ground no. 1 which was taken up for hearing reads as under:

1. *“Because, Ld. CIT(A) grossly erred in sustaining penalty u/s 271(1)(c) being the same is imposed by non-jurisdictional AO which is based on quantum order which again is passed by non-jurisdictional AO and is beyond jurisdiction even otherwise hence imposition of penalty based on such order is inherently illegal.”*

4. On a perusal of the impugned order it is seen that even before the CIT(A) this issue had been agitated by the assessee. It is further seen that apart from this challenge the assessee had also assailed the order in the grounds of being vague as in the notice it was alleged the AO had not struck off the relevant position not applicable i.e. penalty was being levied on the grounds of filing of inaccurate particulars or on the grounds of concealment which was alleged to be not borne out from the notice served. Reliance was placed upon the proposition of law as available in Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Karnataka).

5. It is evident from a reading of para 5.2 to para 5.2.3 of the impugned order that the issue was considered in the context of the position of law as considered in SSA Emerald Meadows 386 ITR 13 only. However, the challenge posed on the assumption of jurisdiction by the Assessing Officer was not addressed despite the fact that it was ground no. 2 raised before the CIT(Appeals). Accordingly, on this short point alone which goes to the very root of the matter the entire order is set aside in *toto* and the issues are restored back to the file of the CIT(Appeals) with the direction to first decide the jurisdictional challenge posed by the assessee and thereafter proceed to decide the issues on merits or any other ground maintainable before the said Authority in accordance with law. Needless to say that a reasonable opportunity of being heard is to be granted and the assessee before the passing of the order.

6. Said order was pronounced in the open court at the time of hearing itself.

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

Order pronounced in the open court on 20/10/2021

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

**Kavita Arora, SPS*

Copy to

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

// BY Order //

Assistant Registrar, ITAT Delhi Benches:
Delhi.