

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA Nos.904, 905 & 906/Del./2019
(ASSESSMENT YEAR : 2007-08, 2008-09 & 2009-10)**

Ms. Sheetal Mehra,
QP – 40, 2ND Floor,
Pitampura,
New Delhi – 110 034.

vs. ITO, Ward 40 (1),
New Delhi.

(PAN : AJAPM1364J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.R. Wadhwa, Advocate
REVENUE BY : Shri Umesh Takyar, Senior DR

Date of Hearing : 03.02.2022
Date of Order : 03.02.2022

ORDER

PER BENCH :

The aforesaid appeals have been filed by the assessee against the separate impugned order of even dated 05.12.2018, passed by the ld. CIT (Appeals)-14, New Delhi in relation to the penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') for the Assessment Years 2007-08, 2008-09 & 2009-10.

2. Facts in brief are that the assessee is an individual and had filed regular return of income on due dates for the AYs 2007-08 to 2009-10.

Thereafter, the assessee's case was reopened under section 148 of the Act and assessment was made by treating the cash deposits as well as funds transferred in her account as unexplained investments. Accordingly, the assessment order was passed u/s 143(3)/147 vide order dated 03.03.2014 for all the three assessment years separately. Against the said order, the assessee's case before the Id. CIT (A) was that she has been dealing in gold ornaments and the cash deposits is out of trading of bullion and jewellery, therefore, the entire source of funds deposited in the bank account is from her business. However, as an alternative, it was contended that in case explanation is not acceptable then only peak amount should be subjected to tax. Id. CIT (A), after considering the assessee's contention that the deposits were from trading of bullion and jewellery in cash, reduced the addition of the entire deposit by taking the peak credit and taking it as income from undisclosed sources for all the three assessment years. In AY 2007-08, the addition was restricted from Rs.1.41 crores to Rs.9,59,158/-; similarly in AY 2008-09 the cash deposit of Rs.7,43,75,300/- was restricted to Rs.29,97,239/-; and in the AY 2009-10 cash deposit of Rs.2,47,06,100/- was restricted to Rs.38,52,454/-.

3. Aggrieved by the said order of the Id. CIT (A), the Revenue went in appeal before the Tribunal wherein it was contended on behalf of the Revenue that plea taken by the assessee before the Id. CIT (A) was never taken before the AO and without calling for any remand report, Id. CIT (A) has simply accepted the peak credit given by the assessee. Secondly, the Department also pleaded that the matter be restored to the AO for fresh hearing. The Tribunal in ITA Nos.2146, 2147 & 2148/Del./2016 vide order dated 11.01.2019 accepted the plea of the

Revenue and set aside the assessment orders dated 03.03.2014 for all the three assessment years to the file of the AO for fresh adjudication and to decide de novo in accordance with law. Thereafter, in pursuance of the order of the Tribunal setting aside the assessment orders for the captioned three assessment years, the AO passed fresh assessment orders vide orders dated 26.12.2019 against which the appeals are pending before the First Appellate Authority (ld. CIT(A)).

4. Now, before passing of the fresh assessment orders, AO has levied the penalty u/s 271(1)(c) of the Act in respect of additions made in the original assessment orders. Even the ld. CIT (A) did not had the benefit of the developments with regard to the earlier assessment orders which have been set aside by the Tribunal because the Tribunal order was passed after the passing of the ld. CIT (A) order.

5. In the light of these facts, ld. counsel for the assessee, Shri S.R. Wadhwa submitted that the impugned penalty orders have been rendered infructuous because the assessment orders and the additions on which the penalty orders passed, are no longer stand as the Tribunal has set aside the assessment for passing fresh assessment orders which have already been done, therefore, the penalty sustained by the ld. CIT (A) does not stand.

6. Ld. DR for the Revenue admitted that the present penalty orders have become infructuous.

7. After considering the aforesaid facts and on perusal of the Tribunal order setting aside the assessments to pass fresh assessment orders and consequently assessment orders has been passed by the AO on 26.12.2019 against which the appeals are pending before the

First Appellate Authority (ld. CIT (A), the impugned penalty orders levied in relation to the original assessment proceedings/orders have no legs to stand and accordingly, the penalty imposed by the AO and confirmed by the ld. CIT (A) are deleted. Now that fresh assessment orders have been passed, then consequent penalty proceedings would be a separate subject matter of appeal if any dependent upon the decision in quantum proceedings.

8. Accordingly, the penalty levied in all the aforesaid years is cancelled and the appeals of the assessee qua AYs 2007-08 to 2009-10 are allowed.

Order was pronounced in open court on 3rd day of February, 2022.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 03.02.2022

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- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A-14, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.