

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.9046/Del/2019

निर्धारणवर्ष/Assessment Year: 2013-14

Raj Kumar Aggarwal A-129-130, DDA LIG Flats, Motia Khan, Paharganj, Delhi.	बनाम Vs.	ITO Ward 63(3), New Delhi.
PAN No. AAJPA5094M		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	None
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	19.05.2022
उद्घोषणाकीतारीख/Pronouncement on	17.06.2022

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-33, Delhi dated 22.10.2019 for the AY 2013-14 in sustaining the penalty levied u/s 271(1)(c) of the Act.

2. The notice sent through speed post fixing the date of hearing on 19.05.2022 has been served on the assessee. However, none appeared on behalf of the assessee. We noticed from the record that similar notice was issued fixing the date of hearing on 21.02.2022 and the notice was served on the assessee. However, none appeared on behalf of the

assessee, nor any adjournment was sought. Therefore, we proceed to dispose of this appeal on hearing the Ld. DR.

3. The Ld. DR submits that in the course of assessment proceedings the Assessing Officer issued notice u/s 143(2) and 142(1) along with questionnaire requiring the assessee to furnish the details and explanations on the return filed by the assessee. The Ld. DR submits that neither the assessee nor his Representative attended when the case was fixed for hearing on several occasions. Since the assessee was not attending the hearings and could not explain as to why income of the assessee should not be estimated and why deduction claimed u/s 80C be not disallowed in the absence of proof the assessee did not furnish any explanation and not cooperated with the proceedings. In view of this, the Assessing Officer estimated the gross profit of the assessee at 8% on the gross receipts and, accordingly, brought to tax an amount of Rs.22,93,543/-. Ld. DR submits that penalty proceedings were initiated u/s 271(1)(c) of the Act. The Ld. DR submits that since the Ld. CIT(A) reduced the estimation of gross profit to 5% as against 8% estimated by the Assessing Officer the Assessing Officer levied penalty on the addition sustained by the Ld.CIT(A) holding that the assessee has furnished inaccurate particulars of income. Ld. DR submits that the penalty levied by the AO was sustained by the Ld. CIT(A) and the order of the Ld. CIT(A) may be confirmed.

4. I have heard the Ld. DR and perused the orders of the authorities below. In the assessment made u/s 143(3) of the Act on 16.02.2016 the Assessing Officer estimated the income of the assessee at 8% of the gross receipts as the assessee was not coming forward to furnish explanations on the queries raised by the Assessing Officer. The AO brought to tax an amount of Rs.22,93,543/- by estimating the income. It is observed that the Ld. CIT(A) reduced the percentage of gross profit to 5% as against 8% estimated by the AO. The AO levied penalty u/s 271(1)(c) on the addition sustained by the Ld. CIT(A) i.e. 5% of gross receipts of Rs.10,53,540/-.

5. The Hon'ble Punjab & Haryana High Court in the case of Hari Gopal Singh Vs. CIT (258 ITR 85) held that when addition was made on estimation basis that by itself does not lead to the conclusion that the assessee either concealed the particulars of income or furnished inaccurate particulars of such income.

6. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT Vs. Aero Traders Pvt. Limited (322 ITR 316), wherein the Hon'ble High Court affirm the order of the Tribunal in holding that the estimated rate of profit applied on the turnover of the assessee does not amount to concealment or furnishing inaccurate particulars. The ratio of the above decisions applies to the facts of the assessee's case. Thus,

respectfully following the above decisions, the AO is directed to delete the penalty levied u/s 271(1)(c) of the Act.

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

Order pronounced in the open court on 17/06/2022

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 17.06.2022
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi