

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.1126/Del/2022
Assessment Year: 2011-12]

With

ITA No.1127/Del/2022
Assessment Year: 2011-12]

Smt. Savita, 387, Shivaji Nagar, Pilkhuwa, Hapur, Uttar Pradesh	Vs.	Income Tax Officer, Ward-(3)(5), Hapur
PAN :ATRPS1131L		
(Appellant)		(Respondent)

Appellant by	Sh. Neeraj Jain, CA
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing	27.07.2022
Date of pronouncement	05.08.2022

ORDER

Captioned appeals by the assessee arise out of two separate orders passed by National Faceless Appeal Centre (NFAC), Delhi. ITA No. 1126/Del./2022 arises out of quantum proceeding, whereas ITA No. 1127/Del/2022 is against imposition of penalty under section 271(1)(c) of the Income Tax Act, 1961 (for short 'the

Act'). However, both the appeals pertain to assessment year 2011-12.

ITA No. 1126/Del/2022

2. As stated earlier, this appeal arises out of quantum proceeding. Briefly the facts are, the assessee is a resident individual. Based on AIR information that the assessee had made cash deposit in a bank account to the tune of Rs.26,30,766/-, the Assessing Officer reopened the assessment under section 147 of the Act. Alleging that the assessee did not comply with the notice issued under section 148 as well as 142(1) of the Act, the Assessing Officer proceeded to complete the assessment ex-parte, to the best of his judgment, by invoking the provisions of section 144 of the Act. While doing so, he determined the taxable income of Rs.13,15,380/-. Against the assessment order so passed, the assessee preferred an appeal before the first appellate authority. However, he dismissed the appeal by sustaining the addition.

3. Before me, the primary grievance of the assessee, as canvassed by learned Authorized Representative is, to the effect that neither in course of assessment proceeding, nor before the

first appellate authority, the assessee was extended a reasonable opportunity of being heard. Thus, he submitted, the issues may be restored back to the Assessing Officer for *de novo* assessment.

4. Though, learned Departmental Representative contested assessee's allegation regarding non-grant of opportunity of being heard, however, he fairly submitted that issues may be restored back to the Assessing Officer for enabling the assessee to appear and furnish supporting evidence in respect of the additions made.

5. Having considered rival submissions and perused materials on record, I find that proceedings before the Assessing Officer as well as before the first appellate authority were concluded *ex-parte* on the allegation that the assessee did not comply with the notices issued by the Departmental Authorities. However, it is the case of the assessee before me that there was invalid service of notice on the assessee. Considering the fact that the assessee has been deprived of furnishing supporting evidence to explain the source of cash deposit before the Departmental Authorities, since, proceedings were completed *ex-parte*, to enable the assessee to furnish the supporting evidence which she could not furnish earlier, I deem it appropriate to restore the matter back to the file

of the Assessing Officer for *de novo* adjudication after providing due and reasonable opportunity of being heard to the assessee. The assessee is directed to reply to the query to be raised by the Assessing Officer and cooperate in finalizing the assessment proceeding. Grounds are allowed for statistical purposes.

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

ITA No. 1127/Del/2022

7. The appeal arises out of the penalty proceeding initiated under section 271(1)(c) of the Act. While deciding the quantum appeal of the assessee in ITA No. 1126/Del/2022 in the earlier paras of the order, I have set aside the order of the first appellate authority and restored the matter back to the file of Assessing Officer for fresh adjudication. Thus, as of now, there is no addition subsisting in case of assessee for the impugned assessment year. That being the case, the penalty imposed under section 271(1)(c) of the Act, for the present, cannot survive. Accordingly, I set aside the impugned order of learned Commissioner (Appeals). It is open to the Assessing Officer to initiate proceeding under section 271(1)(c) of the Act, if warranted, after completion of assessment.

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

9. To sum up, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 5th August, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 5th August, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi