

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT 'SMC' BENCH, VARANASI**

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.18/VNS/2022
Assessment Year: 2008-09**

Smt. Beena Gupta, Power House Road, Mohaddipur, Gorakhpur, U.P. PAN-ABYPG6580E	v.	Income Tax Officer, Ward-1(2), Gorakhpur, U.P.
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	22.08.2022
Date of pronouncement:	22.08.2022

ORDER

SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 27.05.2022 of CIT(A) (National Faceless Appeal Centre, Delhi) arising from penalty order passed under section 271(1)(c) of the Income Tax Act for the assessment year 2008-09.

2. None has appeared on behalf of the assessee when this appeal was called for hearing despite the notices issued to the assessee through RPAD as well as email.

3. At the outset, it is noted that in the quantum appeal, this Tribunal vide order dated 8th May, 2019 has set aside the matter to the record of the CIT(A) for fresh adjudication. Accordingly, the Tribunal proposed to hear and dispose of this appeal *ex parte*.

4. I have heard the learned DR and perused the impugned orders of the authorities below. The CIT(A) has confirmed the levy of penalty under section 271(1)(c) without considering the fact that the additions against which the penalty was levied by the Assessing Officer were already set aside by this

Tribunal to the record of the CIT(A), vide order dated 8th May, 2019 in ITA No. 22/VNS/2018. The relevant finding of this Tribunal in the quantum appeal in para 5 is as under:-

“Having carefully examined the order of the Id. CIT(A) vis-a-vis the grounds of appeal raised before us, we find that though the Id. CIT(A) has recorded certain dates of hearing in his order, but it is not clear from his order whether notice of hearing was ever served upon the assessee. Since the Id. CIT(A) has not disposed of the appeal on merit after affording opportunity of being heard to the assessee, we set aside his order and restore the matter to his file with a direction to re-adjudicate the issues raised before him after affording opportunity of being heard to the assessee. Accordingly, the appeal of the assessee stands allowed for statistical purposes. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee.

Ordered accordingly”

5. Since the CIT(A) has passed the impugned order without considering this fact that this Tribunal has already set aside the quantum proceedings to the record of the CIT(A) for fresh adjudication therefore, in the facts and circumstances of the case, the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the CIT(A) for deciding the same afresh after considering the earlier order of this Tribunal in quantum proceedings and as per the outcome of the set aside proceedings in the quantum proceedings. Needless to say the assessee be given an opportunity of hearing before passing the fresh order.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court after a conclusion of hearing on 22.08.2022.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 22/08/2022
Varanasi
Sh

Copy forwarded to:

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

By order
Sr. P.S.