

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

**BEFORE,
SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.6147/Del/2019
(ASSESSMENT YEAR 2011-12)**

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| M/s Mannat Motors (India) 22, Dudial Apartment Pitampura Delhi-110 088 PAN-AAEFM 1539Q | Vs. | Income Tax Officer Ward-40(3) New Delhi |
| (Appellant) | | (Respondent) |

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| Appellant By | Mr. Ashok Kumar, CA |
| Respondent by | Mr. Jeetender Chand, Senior Departmental Representative ("Sr. DR" for short) |

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-14, New Delhi [Ld. CIT(A)", for short], dated 29/03/2016 for Assessment Year 2011-12.

(A.1) In this case, assessment order dated 24/03/2014 was passed by the Assessing Officer wherein the total income was assessed at Rs.1,00,97,050/- as against returned income of

Rs.4,280/-. The additions made in the aforesaid assessment order included addition amounting to Rs.3,52,990/- by way of Trading addition as (undisclosed profit on sales out of books) and addition amounting to Rs.97,39,780/- made u/s 69A of Income Tax Act. The assessee filed appeal in the office of the learned CIT(A). Vide appellate order dated 29/03/2016, the learned CIT(A) deleted the aforesaid amount of Rs.3,52,900/-. Further, out of the aforesaid amount of Rs.97,39,780/- partly the addition was confirmed and partly the addition was deleted. Separately, the Assessing Officer passed an order u/s 271(1)(c) of Income Tax Act, dated 22/03/2018 wherein he levied penalty amounting to Rs.5,75,355/-. For the purposes of computation of penalty, the Assessing Officer treated the amount of Rs.18,61,990/- to the amount of concealed income. The assessee filed appeal in the office of learned CIT(A) against the aforesaid order dated 22/03/2018 passed u/s 271(1)(c) of Income Tax Act. Vide impugned appellate order dated 09/05/2019 of the learned CIT(A), the aforesaid penalty amounting to Rs.5,75,355/- was confirmed. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 09/05/2019

passed by the learned CIT(A). The grounds of appeal taken in the present appeal are as under:

1. *Hon'ble CIT(Appeal)-14 erred on law and in facts while confirming the penalty amounting Rs.5,75,355/- us 271(1)(c) of the Act.*
2. *The Ld. Assessing Officer (AO) has erred in law while passing penalty order u/s 271(1)(c) of the Income Tax Act, 1961 as the penalty has been imposed on the basis of confirmation of addition by Ld. CIT(A) and not on the basis of concealment of income or furnishing of inaccurate particulars.*
3. *Opportunity of being heard has not been granted by the Hon'ble CIT Appeal-14 as appellant requested for the adjournment in view of pendency of second appeal before Hon'ble ITAT, Delhi but the same was not granted and order confirming the penalty was passed.*
4. *The appellant craves leave to add, alter, amend or vary the above grounds of appeal before or at the time of hearing.*

Additional Ground

5. *[No clear finding/satisfaction was recorded by AO regarding concealment of income or furnishing of inaccurate particulars. "Para 1 of the Penalty order dated 22/03/2018, read as under:*

"Penalty proceedings u/s 271(1)(c) were also initiated separately for concealment of furnishing inaccurate particulars of his income vide letter dated 24/03/2014". Page 5 of assessment order reads "I am satisfied that the assessee has furnished inaccurate particulars of income" Para 5 at last page of the penalty order reads "as a result thereof shall, for the purpose of clause (c) of this subsection be deemed to represent the income in respect of which particulars have been concealed".

(A.1.1) At the time of hearing before us, the Ld. Authorized Representative ("AR" for short) of the assessee submitted that there was arithmetical error in computation of concealed income in the

aforesaid order dated 09/05/2019 passed by the Assessing Officer u/s 271(1)(c) of Income Tax Act wherein amount of concealed income was taken as Rs.18,61,990/- He also made submissions on the various grounds of appeal. However, we find that the aforesaid order dated 22/03/2018 passed u/s 271(1) (c) of Income Tax Act was an ex-parte order in which there was no representation from the assessee's side. Further, we find that the aforesaid impugned appellate order dated 09/05/2019 of the learned CIT(A) was also an ex-parte order in which there was no representation from the assessee's side. In response to the query regarding non representation of the assessee in the proceedings before the learned CIT(A) and before the Assessing Officer; it was submitted by the learned AR for the assessee at the time of hearing before us that reasonable opportunities were not provided to the assessee either by the Assessing Officer or by the learned CIT(A).

(A.2) The learned Sr. DR for Revenue did not dispute the submission of the learned AR of the assessee that reasonable opportunities were not provided to the assessee by the Assessing Officer and by the learned CIT(A). He submitted that the impugned

appellate order dated 29/03/2016 of the learned CIT(A) may be set aside and the issue regarding levy of penalty u/s 271(1)(c) may be restored to the file of the Assessing Officer with the direction to pass fresh order in accordance with law after providing reasonable opportunity to the assessee.

(A.2.1) We find that there was no representation from the assessee's side in the course of proceedings before the Assessing Officer and before us the learned CIT(A). As a result, we do not have the benefit of examination of the factual and legal submissions of the assessee side by the Assessing Officer and by the learned CIT(A). Further, we find that the learned AR of the assessee has expressed the grievance that reasonable opportunities were not provided by the learned CIT(A) and by the Assessing Officer which was not disputed by the learned Sr. DR for Revenue. In view of the foregoing; and in the specific facts and circumstances of the present appeal before us, we set aside the impugned appellate order dated 29/03/2016 of the learned CIT(A) and we restore all the issues in dispute in the present appeal before us, to the file of the Assessing Officer, with the direction to pass *denovo* order in accordance with

law, after providing reasonable opportunity to the assessee. All the grounds of appeal are treated as disposed of in accordance with aforesaid directions.

(B) For statistical purposes, this appeal is partly allowed.

This order was already pronounced orally on 22nd November, 2022 in the Open Court, in the presence of representatives of both sides, after conclusion of hearing. Now, this written order is signed today on 28/11/2022

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated:28/11/2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI