

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1398/Del/2020
Assessment Year: 2009-10

ITA No.6337/Del/2019
Assessment Year: 2009-10

Ankit Lohia, L/H Late Shri Inderjeet, Vs. ITO,
Vill. Molhiyapur, Ward-1(5),
Post Mahaarishi Nagar, Noida.
Sector-163, Gautam Budh Nagar,
Uttar Pradesh – 201304.

PAN: AFAPI3792L

(Appellant)

(Respondent)

Assessee by	:	Shri K.P. Garg, CA & Shri Vineet Garg, Advocate
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	02.11.2022
Date of Pronouncement	:	06.12.2022

ORDER

PER C.M. GARG, JM:

These appeals filed by the assessee are directed against the orders dated 28.03.2018 and 31.12.2018 respectively, of the CIT(A)-I, Noida, relating to Assessment Year 2009-10.

2. The grounds of appeal raised by the assessee read as under:-

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“1. *The proceedings for reassessment u/s 147/144 without the service of notice u/s 148 is without jurisdiction and without the authority of law.*

2. *The proceedings for reassessment u/s 147/144 without the service of notice u/s 143(2)/142(1)/144 is without jurisdiction and without the authority of law.*

3. *The ld.CIT(A) has erred on facts and in law in deciding the appeal without service of notice and without granting an opportunity of hearing to the appellant.*

4. *The ld. AO and the ld.CIT(A) have erred on facts and in law in deciding the case and the appeal and bringing to tax the impugned addition made to an agriculturist not liable to income tax under the Income Tax Act.*

5. *The proceedings of the AO and the ld.CIT(A) are contrary to law and procedure laid down in the Act.”*

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“1. *The proceedings for imposition of penalty without the service of notice u/s 274 is without jurisdiction and without the authority of law.*

2. *The ld.AO has erred on facts and in law in initiating proceedings u/s 271(1)(c) without proper verification regarding taxability of a farmer and failing to comply with the required procedure..*

3. *The imposition of penalty u/s 271(1)(c) without service of statutory notices and without determining the income concealed which was liable to income tax is bad in law.*

4. *The ld. CIT(A) has erred on facts and in law in deciding the penalty appeal without first deciding the quantum appeal, stil pending with him.*

5. *The ld. AO has erred on facts and in law in deciding penalty of Rs.5,80,000/- for concealment of income, which was not liable to income tax.*”

Application of the assessee for condonation of delay

3. The ld. Counsel of the assessee submitted that the assessee had filed the appeal before the Tribunal on 09.07.2020 which had to be filed as per prescribed time limit on or before 18th April, 2020. The ld. Counsel submitted that the assessee had remitted Tribunal fees on 27.02.2020 which was within the prescribed time, but, due to Covid-19 pandemic, the appeal could not be filed on or before 18.04.2020. Therefore, in view of *suo moto* judgement of the Hon’ble Supreme Court dated 10.01.2022 it was submitted that the delay of 81 days may kindly be condoned. The assessee has also filed an affidavit of Shri Ankit Lohia, son & L/H of late Inderjeet Singh, supporting the facts narrated in the condonation petition. The ld. Sr. DR, in all fairness, candidly agreed to the submissions of the ld. Counsel of the assessee that there was a pandemic of Covid-19 and the Hon’ble Supreme Court had extended the time limit for all purposes and clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed for limitation in the provisions of the various Acts. In the present case, the date of filing the appeal falls within the period excluded by the Hon’ble Supreme Court and, therefore, we hold that there was no delay in filing the appeal before the Tribunal. In view of

this we proceed to adjudicate the appeal treating the same as filed within the prescribed time limit.

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4. The Id. Counsel of the assessee submitted that the AO has conducted reassessment proceedings and framed reassessment order u/s 147/144 of the Act without the service of notice u/s 148 and without assuming valid jurisdiction to conduct such proceedings and pass the impugned reassessment order. Therefore, the impugned reassessment order as well as all consequent proceedings and orders may kindly be quashed.

5. Replying to the above, the Id. Sr. DR submitted assessment record and contended that the notice u/s 148 of the Act was issued to the assessee. He also shown us the copy of the register showing handing over of the relevant envelope to the postal authorities. The Id. Sr. DR submitted that as per the provisions of section 149 of the Act as applicable for AY 2009-10, the AO is required to issue notice u/s 148 within the prescribed time limit and it is not the case of the assessee that the notice was not issued within the prescribed time limit. Therefore, the contention of the assessee may kindly be dismissed. The Id. Sr. DR also submitted that the Id.CIT(A) has not given any findings and have not adjudicated the grounds agitated by the assessee in Form No.35, therefore, this issue is required to be restored to the file of the Id.CIT(A) at the first appellate stage for a fresh adjudication.

6. Placing a rejoinder to the above, the ld. Counsel of the assessee vehemently pointed out that as per pre-amended provisions of section 148 of the Act, the service of notice mandatory and without complying with such mandatory requirement, the impugned reassessment proceedings and assessment order passed u/s 148 of the Act has to be held as bad in law and liable to be quashed. The ld. Counsel also placed reliance on the order of the ITAT Delhi Bench 'F' dated 12.08.2022 in *ITA No.1399/Del/2020 and other appeal in the case of Raj Singh vs. ITO* and submitted that when the reassessment proceedings have been completed and reassessment order has been passed without proper service of notice u/s 148 on the assessee, then, the same has to be quashed.

7. The ld. Counsel submitted that if it is found just and proper to restore the matter to the file of the ld.CIT(A), then, the assessee should be given liberty to raise and submit all the legal arguments in his favour challenging the validity of initiation of reassessment proceedings u/s 147 of the Act and issuance of notice u/s 148 of the Act.

8. On careful consideration of the rival submissions, we are of the considered view that the ld.CIT(A) dismissed the appeal by passing a cryptic order by holding that neither the appellant has entered appearance nor any request for adjournment has been received and he presumed that the appellant is not keen to prosecute its appeal. From Form No.35, it is clearly seen that the assessee has raised as many as six grounds challenging the validity of reopening as well as on

merits, but, the Id.CIT(A) has not adjudicated the same as per the requirement of sub-section (6) of section 250 of the Income-tax Act, 1961. Therefore, we are of the view that the matter is required to be restored to the file of the Id.CIT(A) at the first appellate stage for adjudication of the grounds of the assessee as has been raised in Form No.35. Needless to say, the assessee shall be entitled to have opportunity of being heard and to raise all submissions relating to validity of reopening of assessment and on merits before the Id.CIT(A). Therefore, the appeal is restored to the file of the Id.CIT(A) at the first appellate stage for denovo adjudication.

9. In the result, the appeal of the assessee is allowed for statistical purposes only.

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10. In this appeal, the assessee has challenged imposition of penalty u/s 271(1)(c) of the Act on the strength of the additions made by the assessee in the reassessment order dated 29.11.2016 (supra). From a careful perusal of the relevant appeal file and the impugned order dated 31.12.2018, which confirms the penalty imposed by the AO, from para 8 it is discernible that the Id.CIT(A) confirmed the penalty by observing that the addition made by the AO on account of unaccounted cash credit was confirmed by him, therefore, no interference is called for with the impugned penalty order. Since, by the earlier part of this order, we have restored the appeal to the file of the Id.CIT(A) at the first appellate stage

for *denovo* adjudication, therefore, the first appellate order confirming the penalty cannot be held as sustainable and the first appeal of the assessee challenging the imposition of penalty is also restored to the file of the ld.CIT(A) for *denovo* adjudication in accordance with the outcome of the quantum appeal. Accordingly, the appeal of the assessee challenging the imposition of penalty is also restored to the file of the ld.CIT(A).

11. In the result, both the appeals filed by the assessee are allowed for statistical purposes only in the manner as indicated above.

Order pronounced in the open court on 06.12.2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 06th December, 2022.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi