

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No.3832/Del/2019
(Assessment Year : 2009-10)

Sanjay Aggarwal 2263, Sita Ram Bazar, Shankar Street, Delhi-110 006 PAN : AAEP A 3239 K (APPELLANT)	Vs.	ITO Ward – 28(4) New Delhi (RESPONDENT)
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Assessee by	Shri Dinesh Mohan Singh, Adv.
Revenue by	Ms. Kirti Sankratyayan, Sr. D.R.

Date of hearing:	20.12.2022
Date of Pronouncement:	26.12.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-16, New Delhi dated 29.12.2017 for Assessment Years 2009-10.

2. Assessee is an individual stated to be engaged in the business of manufacturing and trading of earthing and overhead line material. Assessee electronically filed his return of income for A.Y. 2009-10 of Rs. 3,03,420/-. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s

143(3) vide order dated 29.12.2011 and the total income was determined at Rs. 95,06,940/- *inter alia* by making addition of Rs. 91,82,261/- of unconfirmed sundry creditors.

3. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 29.12.2017 in Appeal No.125/14-15 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

1. *“That the order is bad in law and facts of the case.*
2. *That penalty notice is issued u/s 271(1)(c) of the IT Act, 1961 is bad in law. Hence subsequent penalty order dated 18.03.2014 is also bad.*
3. *That the order upholding by Ld. CIT dated 29.12.2017 is bad.*
4. *That the assessee reserve his right to file detail/more grounds of appeal at the time of hearing of the appeal.”*

4. Before us, at the outset, Learned AR submitted that the present appeal is with respect to levy of penalty u/s 271(1)(c) of the Act. He submitted that the quantum addition which was the basis of addition of the penalty has been set aside by Hon'ble ITAT in order dated 30.05.2019 (ITA No.822/Del/2016) and therefore, the penalty does not survive.

5. Before us, Learned DR on the other hand submitted that CIT(A) has not disposed of the appeals of the assessee on merits

and since the factual submission now made by Ld. AR has not been examined, the matter be restored to lower authorities.

6. We have heard the rival submissions and perused the material available on record. Before us, it is the submission of Ld. AR that the quantum addition which was the basis of levy of impugned penalty has been set aside by Hon'ble ITAT, the penalty does not survive. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 29.12.2017 and restore the issue to the file of CIT(A) for re-adjudication of the issue after granting sufficient opportunity of hearing to the assessee and considering the submissions of the assessee. Assessee is also directed to furnish the details called for by the lower authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 26.12.2022

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 26.12.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI