

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

**BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.6743/Del/2019
(ASSESSMENT YEAR 2006-07)**

Devanshi Amit Gupta Aerens Bimaldeep Complex, Behind Pocket D-3 Vasant Kunj New Delhi-110 070 PAN-AAFPJ 1605F (Appellant)	Vs.	ACIT,CC-18 New Delhi (Respondent)
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Appellant by	None
Respondent by	Mr. Sunil Kumar Yadav, 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)-27, New Delhi [Ld. CIT(A)", for short], dated 10/06/2019 for Assessment Year 2006-07.

Grounds taken in this appeal are as under:

"1. The Hon'ble CIT(A) has not followed the law of natural justice while confirming additions by the Ld. A.O.

2. *That the impugned Appeal Order is bad in law, illegal, and in violation of rudimentary principal of contemporary jurisprudence.*
3. *On the facts and circumstances of the case, the Order passed by the learned CIT(A) u/s 271(1)(c) is bad both in the eyes of law and facts.*
4. *That the impugned penalty order is arbitrary, illegal, bad in law in violation of rudimentary principles of contemporary jurisprudence.*
5. *That the Appellant craves leave to add/alter any/all grounds of appeal or at the time of hearing of the Appeal.”*

(B) In this case, assessment order dated 29/03/2014 was passed by the Assessing Officer (“AO” for short) u/s 153A read with section 143(3) of the Income Tax Act determining the assessee’s total income at Rs.12,22,824/- (rounded off to Rs.12,22,820/-). In the aforesaid assessment order an addition of Rs.12,12,500/- was made. The Ld. CIT(A), vide order dated 28/03/2016 in appeal No.192/14-15/32/15-16 dismissed the assessee’s appeal and confirmed the aforesaid addition of Rs.12,12,500/-. The Assessing Officer passed a separate order dated 28/03/2018 u/s 271(1)(c) of Income Tax Act, imposing the penalty amounting to Rs.7,59,702/-/ The assessee filed appeal against the aforesaid order dated 28/03/2016 of the Ld. CIT(A) in Income Tax Appellate Tribunal (“ITAT” for short). The assessee also filed appeal against the aforesaid order dated 28/03/2018 passed u/s 271(1)(c) of IT Act.

Vide impugned appellate order dated 10/06/2019, the Ld. CIT(A) dismissed the assessee's appeal and confirmed the aforesaid penalty amounting to Rs.7,59,702/- imposed u/s 271(1)(c) of Income Tax Act. Vide order dated 17/02/2021 of Co-ordinate Bench of ITAT, Delhi in ITA No.3822/Del/2016 for AY 2006-07 in the case of the assessee, the issue regarding aforesaid quantum addition of Rs.12,12,500/- was restored to the file of the Ld. CIT(A) for being adjudicated upon afresh by passing a speaking order after providing proper opportunity to the assessee. The present appeal before us has been filed by the assessee against the aforesaid impugned appellate order dated 10/06/2019. In the course of appellate proceedings in Income Tax Appellate Tribunal a letter dated 17/10/2022 was filed from the assessee's side stating as under:

"It's respectfully submitted to your honor that the quantum appeal for A.Y.2006-07 Appeal No.192/14-15/32/15-16 is pending before hon'ble CIT(A), New Delhi which was restored back by the Hon'ble ITAT, New Delhi Bench-'D' via order dated 17/02/2021 ITA No.3822/Del/2016. Copy of ITAT Order is attached herewith as Annexure-01 of your ready reference.

In view of the above kind requested to your honor that the above said appeal may be kept in abeyance of restored back CIT(A), for a fresh hearing till the disposal of quantum appeal by Ho'ble CIT, New Delhi.

Hence, it is requested kindly your honor to keep in abeyance or restored back to CIT(A) for a logical argument or any other dated as may be convenient.”

(B.1) At the time of hearing before us, the assessee was represented by none. In the absence of any representation from the assessee’s side, we heard Sh. Sunil Kumar Yadav, Ld. SR. DR for Revenue. On query from Bench, he submitted that the issue regarding quantum addition of aforesaid amount of Rs.12,12,500/- having already been restored to the file of the Ld. CIT(A); the issue in the present appeal regarding levy of penalty u/s 271(1)(c) of Income Tax Act in respect of the aforesaid quantum addition of Rs.12,12,500/- may also be set aside to the file of the Ld. CIT(a) for passing a *denovo* order.

(C) We have perused the submissions made by the assessee in aforesaid letter dated 17/10/2022. We have heard the Ld. Sr. DR for Revenue. We have perused the records. After due consideration and in respectful deference to aforesaid order dated 17/02/2021 of Co-ordinate Bench of ITAT, Delhi, we set aside the aforesaid impugned appellate order dated 10/06/2019 of the Ld. CIT(A) and restore the issue regarding levy of penalty u/s 271(1)(c) of IT Act to

the file of the Ld. CIT(A) with the direction to pass denovo order in accordance with law after providing reasonable opportunity to the assessee and giving due consideration to the consequential order in respect of aforesaid quantum addition of Rs.12,12,500/- which the Ld. CIT(A) would pass (or may have passed already) in pursuance of the aforesaid order dated 17/02/2021 of Co-ordinate Bench of ITAT, Delhi.

(D) For statistical purposes, the appeal is treated as partly allowed.

Order pronounced in the Open Court on 24/01/2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 24/01/2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI