

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 6498/Del/2019  
Assessment Year: 2015-16**

Rachna Mediratta,  
A-11, First Floor,  
Kirti Nagar,  
New Delhi.

**PAN: AAEPM4186F**  
(Appellant)

Versus Income-tax Officer,  
Ward 13(3), New Delhi.

(Respondent)

Appellant by : None  
Respondent by : Sh. S.L. Verma, Ld. Sr. DR

Date of hearing: 19.01.2023  
Date of order : 07.02.2023

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 29.05.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- 5, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

**2.** In the instant case, the Assessing Officer made the additions of Rs.4,00,000/- and Rs.4,80,000/- on account of failure to furnish source of cash deposit by the Assessee in her two bank accounts and low cash withdrawals for household expenses respectively. The Assessing Officer also initiated the penalty proceedings u/s. 271(1)(c)

of the Act and in respect of the said, for concealment of income and furnishing of inaccurate particulars and ultimately levied the penalty to the tune of Rs.2,71,920/- on the income of Rs.8,80,000/- (Rs. 4,00,000 + Rs.4,80,000/-) allegedly sought to be evaded.

**3.** The Assessee, being aggrieved, challenged the levy of penalty before the Id. Commissioner and with regard to the addition of Rs.4,00,000/- made by the Assessing Officer, claimed that the amount of cash deposit in its bank accounts is towards the cash gifts given by her husband for purchase of gifts/jewellery. With regard to low cash withdrawals for house hold expenses, the Assessee claimed that she is living in joint family and therefore has no independent household expenses liability.

**4.** The Id. Commissioner though considered the claim of the Assessee , however rejected the same by holding *“that in Assessee’s first submissions, she has mentioned that Rs.4,00,000/- deposited in cash is out of her past savings whereas now she has stated that this money has been given by her husband for purchase of gifts/jewellery. There is no consistency in the stand of the Assessee and it cannot be considered as correct. Nothing has been submitted to rebut the argument of the Assessing Officer in the penalty order which is supported by various case laws. The Assessee has not challenged such additions before the Appellate Authority against the assessment order. These arguments cannot be considered during the penalty proceedings when addition has not been challenged subsequently. The submissions of the Assessee that based on the assurance of the Assessing Officer that penalty will not be levied, tax has been paid and therefore, penalty is not called for, is not acceptable as no proof nor legally correct and devoid of merits. As per assessment order, duly accepted by the Assessee, the Assessee is found to have concealed income of Rs.8,80,000/- and therefore, I have no reason to differ with the*

*findings of the Assessing Officer in the penalty order. Accordingly, the penalty amounting to Rs.2,71,920/- is sustained."*

**5.** None present on behalf of the Assessee, despite issuing notice for hearing, to the address provided in Form No. 36 nor is there any application for adjournment on record, therefore, in the constrained circumstances, we deem it appropriate to decide the instant appeal as ex-parte.

**6.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the addition of Rs.4,00,000/- was made by the Assessing Officer in the absence of details and evidence of Rs.4,00,000/- which remains unexplained. However, it appears from the impugned order as claimed by the Assessee that the said amount was deposited by the Assessee out of her past savings and given by her husband to purchase gifts/jewellery. Further, the Assessee also claimed that she is living in joint family and sharing a common kitchen since last so many years, therefore, her personal expense was not more than Rs.4000/- to 5000/- during the assessment year under consideration, as already explained by the Assessee by her letter dated 22.12.2017. As the most of house hold expense were born by elder persons like her husband, father in law etc., using common kitchen, therefore, the reason of low cash withdrawals is justified. In our considered opinion low cash withdrawals for household expenses also ipso facto cannot lead to imposition of penalty. No doubt, addition can be made, however, in each and every case, the penalty is not warranted until and unless the peculiar facts entail so, which in the instant case does not appear so.

**6.1** We observe that the reasons explained for deposit of Rs.4,00,000/- and low cash withdrawals for household expenses as

stated above, seems to be quite reasonable and logical. However, the same was also doubted by the Id. Commissioner mainly on the ground that the Assessee has not challenged the said additions before any appellate authority, therefore, these arguments cannot be considered during the penalty proceedings, when the addition has not been challenged. In our considered view, not challenging the additions before the Appellate authority *ipso facto* does not lead to levy/affirmation of penalty. Penalty proceedings are independent proceedings and cannot be solely based on outcome of the additions/assessment order. Levy of penalty could be examined independently and without being influenced by the determinations made for making the addition(s).

**6.2** Even otherwise, in the instant case, the Assessing Officer initiated the penalty proceedings on both of the limbs, i.e., concealment of particulars of income and furnishing inaccurate particulars of income. However, while passing the order u/s. 271(1)(c) of the Act, levied the penalty only for furnishing inaccurate particulars of income and the Id. Commissioner in its order held that as per the assessment order duly accepted by the Assessee, the Assessee is found to have concealed the income of Rs.8,80,000/-. The actions of the authorities below in recording the satisfaction qua initiation of penalty proceedings, initiation, imposition and affirmation of levy of penalty, are not in sync with each other.

**6.3** Considering the peculiar facts and circumstances in totality, we are unable to sustain the levy of penalty. Consequently, the penalty imposed by the Assessing Officer and affirmed by the Id. Commissioner stands deleted.

**7.** In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 07/02/2023.

Sd/-

**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-