

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

**BEFORE,
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.6336/Del/2018
(ASSESSMENT YEAR 2010-11)**

Mr. Rakesh Gupta C-3/28-29, Sector-15 Rohini, New Delhi PAN-AJAPK 4533H (Appellant)	Vs.	DCIT, Central Circle-19 New Delhi (Respondent)
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Appellant by	None
Respondent by	Mr. Sanjay Kumar, 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 14/12/2016 for Assessment Year 2010-11.

Grounds taken in this appeal are as under:

"1. That the order passed by the Ld. CIT(Appeals) under section 250 of the Income Tax Act, 1961 is bad in law and not justified because Ld. CIT(A) has dismissed the appeal simply on account of non-prosecution of the appeal by the appellant without appreciating the judgment of Hon'ble Bombay High Court in case of CIT (Central) Nagpur vs. Premkumar

Arjundas Luthra (HUF), [2016] 69 taxmann.com 407 (Bombay), where it has been held that law does not empower Ld. CIT(A) to dismiss the appeal for non-prosecution.

2. *The Ld. CIT(A) has erred both in law and in facts in upholding the order of penalty passed initiated u/s 271(1)(c) of IT Act ignoring the fact that the search has been conducted on appellant on 26.04.2010 and therefore the order of penalty has to be initiated and passed u/s 271AAA of IT Act.*

3. *The Ld. CIT(A) has erred both in law and in facts in upholding the impugned penalty order passed by Ld. AO ignoring the fact that the assessment order of the AO in the quantum proceedings was altered by the CIT(A) in a significant way and the Ld. CIT(A) has not initiated penalty proceedings on the additions made in substitution of the old addition. In absence of initiation of penalty proceedings during appeal, the penalty order based on finding of Ld. CIT(A) is bad in law and without jurisdiction.*

4. *Without prejudice to the ground no.3, the Ld. CIT(A) is, neither on facts nor in law, justified in upholding the levy of penalty of Rs.3,60,646/- u/s 271(1)(c) for furnished inaccurate particulars of income thereby concealed true particulars of such income whereas the penalty proceedings had been initiated as per the order of assessment for one default which is furnishing inaccurate particulars of income. The AO was not justified changing over the default while levying the penalty in consequent of such initiation for the default for which penalty proceedings were initiated.*

5. *The Ld. CIT(A) has erred both on facts and in circumstances of the case in confirming imposition of penalty of Rs.3,60,646/- u/s 271(1)(c) for furnishing inaccurate particulars of income thereby concealed true particulars of such income without specifying the precise default in the notice and therefore the printed notice without striking off the inapplicable issued for levy of penalty was vague, non-communicative and thus non-speaking defeating the purpose of notice.*

6. *The AO has erred both on facts and in law in levying penalty of Rs.3,60,646/- u/s 271 (1)(c) of IT Act for furnishing inaccurate particulars of income and for concealing particulars of income as wells as by applying*

Explanation to section 271(1)(c) of IT Act ignoring the fact that the addition in the quantum proceedings have been confirmed on estimate basis by substituting the rate of commission on accommodation entries by the authorities at higher rate. The rejection of the explanation in support of the rate of commission declared by the appellant is merely based on the presumption not on any material or evidence on records.

7. *The AO both in facts and in law and also in the circumstances of the case has erred in levying penalty on the additions sustained on estimated basis by the Id. CIT (A) ignoring the fact that estimation of income is a process where exact income cannot be computed due to subjective considerations in favour of revenue are taken by the revenue authorities with a view to plug all possible chances of income remaining untaxed due to lower estimation of income.*

8. *The Ld. CIT(A) has confirmed the penalty order without considering the fact that the order of penalty dated 30.03.2015 has been passed without considering the submission of the appellant on merits of the penalty, proposed to be levied through the show cause notice, made before the AO vide letter dated 11.03.2015 submitted to the AO on 12.03.2015.*

9. *The Ld. CIT(A) has grossly erred in not considering the written submissions made before her in support of Grounds of Appeal raised in appeal.*

10. *The appellant craves leave to add, delete, modify/amend the above grounds of appeal with the permission of the Hon'ble appellate authority."*

(B) Vide assessment order dated 28.03.2013 passed u/s 153A/143(3) of the Income Tax Act, 1961; ("IT Act", for short) and the assessee's total income was assessed at Rs.36,96,570/-. The assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated 14/12/2016; the Ld. CIT(A) dismissed the assessee's

appeal. The present appeal before us was filed by the assessee against the aforesaid impugned appellate order dated 14/12/2016. At the time of hearing before us on 22/03/2023, none was present on behalf of the assessee. In the absence of any representation from the assessee's side, we have heard the Ld. Sr. DR for Revenue.

(B.1) We find from the perusal of the impugned appellate order dated 14/12/2016 of Ld. CIT(A) that the Ld. CIT(A) dismissed the assessee's appeal *in limine*, taking adverse view of non-compliance with notices of hearing issued by office of the Ld. CIT(A). The Ld. CIT(A) dismissed the assessee's appeal in a summary manner, for non-compliance with the notices of hearing, under the presumption that the assessee had nothing to appeal against the additions made by Assessing Officer. The Ld. CIT(A) did not decide the assessee's appeal on merits, and dismissed the appeal *in limine*. The relevant provisions under I.T. Act regarding procedure in appeal, and powers of the Commissioner [Appeals] are contained in Sections 250 and 251 of I.T. Act, which are reproduced below for ready reference:

“250. (1) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal—

(a) the appellant either in person or by an authorized representative;

(b) the Assessing Officer, either in person or by a representative.

(3) The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

(5) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable.

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

[(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A

(7) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and

to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.”

(B.1.1) A perusal of the above provisions of law shows that U/s 250(6) of I.T. Act, the Ld. CIT(A) was obliged to dispose off the appeal in writing after stating the points for determination and to then pass an order on “each of the points which arose for consideration”; and the Ld. CIT(A) was further obliged to state the reasons for his decision on each such points which arose for determination.

(B.2) At the time of hearing before us, the Ld. Sr. Dr for Revenue submitted that the Ld. CIT(A) may be directed to pass fresh order in accordance with law after providing reasonable opportunity to the assessee, ensuring proper adherence to section 250(6) of I.T. Act.

(B.2.1) In view of the foregoing, and in the specific facts and circumstances of the present appeal before us, we hold that the Ld. CIT(A) erred in dismissing the appeal of the Assessee *in limine* in a summary manner and accordingly; we set aside the impugned order of the Ld. CIT(A); and further, we direct the Ld. CIT(A) to pass *denovo* order as per law after providing reasonable opportunity to

the appellant assessee, ensuring proper adherence to section 250(6) of I.T. Act.

(C) In the result, the assessee's appeal is partly allowed for statistical purposes.

This order was pronounced in Open Court on 22/03/23 in the presence of Sr. DR for Revenue, after conclusion of the hearing and is signed today on 22/03/23.

Sd/-

(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 22/03/23

Pk

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI