

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 1286/DEL/2019
Assessment Year: 2008-09**

Sh. Gaurav Gauba, House No. 29, Sector-15, Part-1, Gurgaon-122001. PAN- AIZPG2182J	<u>Vs</u>	DCIT, Central Circle-14, New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Ms. Monik, Adv.	
Department represented by	Sh. Anuj Garg, Sr. DR	
Date of hearing	19.04.2023	
Date of pronouncement	19.04.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-XXVI, New Delhi, dated 17.12.2018, pertaining to the assessment year 2008-09. The assessee has raised following grounds of appeal:

“1. That the learned Commissioner of Income Tax (Appeals)-XXVI, New Delhi has erred both in law and on facts in upholding penalty of Rs. 1,73,582/- under section 271 (1)(c) of the Act.

2. That while upholding levy of penalty, learned Commissioner of Income Tax (Appeals) has failed to appreciate that since notice dated 25.2.2013 was vague in as much as it did not state as to whether the assessee has either concealed the particulars of income or furnished inaccurate particulars of income and such a notice could not have been made a basis either to levy penalty or sustain the penalty under section 271(1)(c) of the Act

3. That furthermore, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific charge in the order of penalty under section 271(1)(c) of the Act and order was vague and non-specific and thus, even on this ground, penalty levied and sustained is illegal, invalid and untenable

4. That also, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no valid satisfaction recorded in the order of assessment u/s 144/143(3)/264 of the Act and therefore, in absence of any satisfaction having been recorded in terms of section 271(1)(c) of the Act, penalty sustained is not in accordance with law.

5. That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that no opportunity was granted to the appellant before levying the order of penalty dated 31.3.2017 and thus, any order made without granting any opportunity not only violates the statutory provisions contained in the Act but also contrary to principles of natural justice and therefore, a vitiated order.

6. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in holding mechanically that following addition made and sustained by the learned Commissioner of Income Tax (Appeals) in appellate order warranted levy of penalty under section 271(1)(c) of the Act:

Sr. No.	Particulars	Addition sustained by the learned CIT(A)
i)	Addition representing cash deposits in the bank account and, held as alleged	3,00,000

	<i>unexplained cash credit u/s 68 of the Act</i>	
ii)	<i>Addition representing alleged unexplained cash seized found from locker and, held as income from undisclosed sources</i>	1,50,000
	<i>Total</i>	4,50,000

6.1 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that nature of addition sustained by learned Commissioner of Income Tax (Appeals) did not tantamount to either concealment of income or furnishing of inaccurate particulars of income.*

6.2 *That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that penalty proceedings and quantum proceedings are independent proceedings and therefore, there can be no mechanical imposition of penalty under section 271(1)(c) of the Act.*

6.3 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that addition under section 68 of the Act being a deeming section does not warrant levy of penalty under section 271(1)(c) of the Act.*

6.4 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that bonafide and genuine claims or inadvertent errors do not mechanically warrant levy of penalty under section 271(1)(c) of the Act.*

6.5 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once additions made had been disputed in appeal before the Hon'ble Tribunal which is yet pending, no penalty could have been sustained under section 271(1)(c) of the Act. That even otherwise, penalty levied and sustained at 150% of tax sought to be evaded is excessive and without any basis and therefore, untenable.*

7. *That even otherwise, penalty levied and sustained at 150% of tax sought to be evaded is excessive and without any basis and therefore, untenable."*

2. Facts giving rise to the present appeal are that for A.Y. 2008-09 the Assessing Officer completed the assessment u/s 144 read with Section 153A and assessed the assessee's income at Rs. 32,59,500/- by making addition of Rs.

31,65,000/- to the returned income of Rs. 94,500/-. In appeal, the learned CIT(Appeals) reduced the addition to Rs. 4,50,000/-. The AO initiated penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 (the "Act") for concealment of income by furnishing inaccurate particulars of income and vide penalty order dated 31.03.2017 levied the penalty of Rs. 3,47,163/- @ 300% of the tax sought to be evaded. Aggrieved against it the assessee appealed to the learned CIT(Appeals), who vide impugned order dated 17.12.2018 restricted the penalty to Rs. 1,73,582/- @ 150% of the tax sought to be evaded. Aggrieved against this the assessee is in appeal before this Tribunal.

3. At the outset learned counsel for the assessee submitted that in the present case the Tribunal in quantum proceedings in CO No. 93/Del/2016 has quashed the assessment order, therefore, the impugned penalty would not survive. Learned counsel has taken us through the Tribunal's order 08.02.2023 rendered in CO 93/Del/2016, filed by the assessee.

4. Learned DR could not rebut the submissions made by the learned counsel for the assessee. He, however, submitted that the Department has not given up its stand.

5. We have heard rival submissions and gone through the material available on record. We find that the coordinate Bench of this Tribunal in para 39 of its order

dated 8.02.2023 held that the approval granted by the Addl. Commissioner was mechanical and without application of mind. Hence, the Tribunal annulled the assessment so framed being bad in law. That being the position in our considered view the impugned penalty would also not survive. Accordingly, impugned penalty levied u/s 271(1)(c) of the Act is deleted.

6. Appeal of the assessee is allowed.

Order pronounced in open court on 19th April, 2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI