

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

**BEFORE SH. I.C. SUDHIR, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 853/Del/2014
Assessment Year: 2008-09

Sh. Sanjeev Kumar Mishra, C/o- M/s. D. Ostwal & Associate, FCA, 303-304 Dakha Chambers, 2068/38, Naiwala, Karol Bagh, New Delhi. (PAN : AGZPM2162L)	Vs.	Income Tax Officer, Ward-26(3), New Delhi
(Appellant)		(Respondent)

Appellant by	S/sh. D. Ostwal & Rishabh Ostwal, CA
Respondent by	Smt. Anima Barnwal, Sr. DR

Date of hearing	29.03.2016
Date of pronouncement	31.03.2016

ORDER

PER O.P. KANT, A.M.:

This appeal of the assessee is directed against order of the Commissioner of Income-tax(Appeals)-XVIII, New Delhi confirming the penalty levied by the Assessing Officer under section 271(1)(c) of the Income-tax Act, 1961 for assessment year 2008-09. The grounds of appeal raised by the assessee are as under:

1. *On the facts and in the circumstances of the case the Commissioner of Income Tax(Appeals) has erred both on facts and in law in illegal orders perversely passed by the A.O., without any application of mind fairly and objectively to the facts of the case and the law applicable and also in violation of natural justice.*
2. *The Authorities below have erred both on facts and in law in making/sustaining illegal and imaginary liability to penalty of Rs.*

5,08,629/- based on illegal additions of Rs. 15,27,644/- as income of the appellant without any basis or justification valid in law.

3. *The Authorities below have also erred in ignoring the facts transactions involving payment/repayment of money from one bank to another by transfer from one account to another account of the same assessee in respect of credit cards and transaction therein for repaying the loan of the earlier card cannot at all be regarded as income liable to tax and the entire illegal additions perversely made are liable to be vacated with consequential relief to the appellant in respect of tax, interest and penalties also.*

2. The facts in brief are that the assessment in this case was completed on 16/12/2010 under section 143(3) of the Act making addition of Rs. 15,27,644/- for making payments towards credit card bills which was held as unexplained. The Assessing Officer levied penalty of Rs. 5,08,629/- under section 271(1)(c) of the Act on 14/06/2011, which was upheld by the Ld. Commissioner of Income-tax(Appeals) by the impugned order. Hence, the assessee is in appeal before us.

3. At the outset, the Ld. Authorized Representative of the assessee submitted that the addition in dispute of Rs. 15,27,644/- has already been deleted by the Tribunal wide order dated 19/02/2016 in ITA No. 852/Del/2014 and provided a copy of the said decision, which is placed on record. The Ld. AR also supplied a copy of the said decision to the Senior Departmental Representative, who also could not controvert the facts.

4. We have heard the rival submissions and perused the material on record. The Tribunal in ITA No. 852/Del/ 2014 has held as under :

“4. At the time of hearing before us, learned counsel for the assessee furnished the summary of total credits cards payment by the assessee, copy of which is annexed herewith as Annexure-A for ready reference. From the same, it is apparent that the total payment made by the assessee against various credit cards is Rs. 20,99,082/-. However, from the source of payment, it is evident that all the payments have been made by using other credits cards. There is no cash payment made against any credit card from one credit card, the assessee made the payment for another credit card. In view of the above, we do not find any justification for holding that there was any unexplained payment made against the credit cards. The payment

was made for one credit card by utilizing the credit facility of another credit card. In view of the above, we delete the addition of Rs. 15,27,644/- made by the Assessing Officer and sustained by the learned CIT(A).

5. We find that the addition on the basis of which the penalty was levied, itself has been deleted by the Tribunal, and therefore, the penalty levied in respect of the same addition cannot survive, thus we delete the penalty of Rs. 5,08,629 levied under section 271(1)(c) of the Act in the case of the assessee. Accordingly, grounds of appeal of the assessee are allowed.

The decision is pronounced in the open court on 31st March, 2016.

Sd/-

(I.C. SUDHIR)

JUDICIAL MEMBER

Dated: 31st March, 2016.

Laptop

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi