

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

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

**ITA No. 5276/DEL/2015
Assessment Year: 2009-10**

Minaketan Samal, F-047, Delta-I, Greater Noida. PAN- AQIPD7409M	<u>Vs</u>	DCIT, Circle-3, Noida.
APPELLANT		RESPONDENT
Assessee represented by	Sh. V. Rajakumar, Adv.	
Department represented by	Sh. Atiq Ahmed, Sr. DR	
Date of hearing	18.05.2023	
Date of pronouncement	19.05.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-I, Noida, dated 10.06.2015, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

"1. The CIT (Appeals) has reproduced our submission in the penalty appeal but instead of dealing with the submission has rejected the appeal on the grounds of non-co-operation in the assessment proceedings.

2. There was full co-operation in the appeal imposing penalty and the newly appointed firm of CA's appeared before the CIT(A) at the first date and time of appeal fixed and filed a written submission. In the order u/s 250 of the Income Tax Act, 1961 passed by the Commissioner of Income Tax

(Appeals)-I the same points as in the quantum appeal are repeated without considering our submission in the penalty appeal.

3. *That total income on which penalty @ 100% was imposed was as follows:-*

<i>Total income</i>		<i>90,69,280</i>
<i>Less: (a) Income declared</i>	<i>44,02,582</i>	
<i>(b) Interest income</i>	<i>2,57,161</i>	<i><u>46,59,743</u></i>
		<i>44,09,537</i>
<i>Tax @ 33.3%</i>		<i>14,98,800</i>
<i>Penalty u/s 271(1)(c)</i>		<i>14,98,800</i>

4. *Penalty on Rs. 90,69,280 is not imposable for the following reasons*

(a) *Income computed @ 8% under section 44AD* *49,43,641*

The said income was 8% of Rs. 6,17,95,515.

If income is computed on estimated percentage basis no penalty u/s 271 (1)(c) or disallowance of expenses permissible as supported by Allahabad High Court decisions

(b) *No penalty on the disallowance of* *35,92,572*

Because it consists of service tax *25,18,784*

Advance from Samsung *18,00,000*

43,18,784

Less: Material sale include in

Fabrication and job work sales *7,26,212*

35,92,572

Service tax and advance from Samsung is not a part of income.

(c) *Payments made by credit card on account of expenses which cannot be disallowed if income assessed on estimated basis.*

Besides all payments are genuine

and details submitted during assessment *2,75,906*

(d) *Interest income fully disclosed in the accounts* *2,57,161*
90,69,161

Therefore penalty incorrectly imposed and submissions made by us reproduced in the order but not dealt with in the order.”

2. At the outset learned counsel for the assessee submitted that the present appeal has been filed against the sustenance of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (the “Act”). He contended that the appeal filed in quantum proceedings the Coordinate Bench of this Tribunal is pleased to set aside the order and restored the issue of quantum addition to the file of learned CIT(Appeals). He, therefore, submitted that since the matter is now restored before the learned CIT(Appeals) in quantum proceedings, the present appeal shall also be set aside to the file of the learned CIT(Appeals).

3. On the other hand, learned DR supported the orders of authorities below.

4. We have heard the rival submissions and perused the material available on record. We find that the AO had made addition in respect of income from contract business and expenditure incurred by way of credit cards amounting to Rs. 41,33,631/- and Rs. 2,75,906/- respectively. Thus, the AO had imposed penalty of Rs. 14,98,800/- U/s 271(1)(c) of the Act. The assessee carried the matter before the learned CIT(Appeals) who also sustained the penalty.

5. In the quantum appeal in ITA no. 2084/Del/2014 the Coordinate Bench of this Tribunal admitted the additional evidence related to the impugned additions

and set aside the impugned order and remanded the issues to the file of the learned CIT(Appeals) for decision afresh, inter alia, by observing as under:

“6.6 Considering the aforesaid sequences, callousness, non-cooperate and irresponsible attitude of the Appellant and the insufficient cause shown by the Appellant which prevented him from producing the evidence before the Assessing Officer, not substantiating its contentions and claim made in the appellate proceedings before the Id. Commissioner as well and the findings of the Ld. Commissioner to the effects "that the Appellant did not bother to produce books of accounts, bills/vouchers, bank account and other evidences", we are hesitant to entertain the plea/contention of the Appellant qua admission of additional evidence, however considering the medical history of the Appellant and magnitude of documents i.e. Balance Sheet and P & L account (31-03-2009), Form 26AS for A.Y. 2009-10, Breakup of expenditure through Credit Card and Donation receipt for claiming deduction u/s 80-G/80C of the Act, allegedly already filed before the Ld. Commissioner, which prima facie appears to be relevant for the proper adjudication of issues involved and therefore just decision of case and for the ends of justice and to resolve the controversy qua filling or nonfilling of documents, we deem it appropriate to set aside the impugned order and consequently remand the case to the file of the Id. commissioner for decision afresh by considering the peculiar facts, circumstances and documents, including referred to above allegedly filed along with application under rule 46A of the Rules, if already filed in appellate proceedings before its predecessor, but subject to cost of Rs.55000/- to be deposited by the Appellant in "National Relief Fund" within 15 days of the receipt of this order.

We also direct the Appellant to cooperate with the Appellate proceedings and to appear and file the relevant document(s) if any would be required by the Ld. Commissioner for proper and real adjudication of the issues involved. We clarify that in case of further default, the Appellant shall not be entitled for any leniency.”

7. From the above order it is clear that the quantum appeal was restored to the file of learned CIT(Appeals) subject to payment of costs. It is submitted on behalf of the learned counsel for the assessee that costs would be deposited in a day or

two. Considering the submissions of the assessee the impugned order of the learned CIT(Appeals) sustaining the penalty levied u/s 271(1)(c) of the Act, is set aside and the grounds of appeal are restored to the file of learned CIT(Appeals) who would decide the issue of imposition of penalty after adjudicating the quantum appeal. The learned CIT(Appeals) would verify whether the assessee has deposited the costs as directed by the Coordinate Bench and thereafter proceed for deciding the appeal.

8. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 19th May, 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

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