

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.6859/Del/2019
Assessment Year: 2015-16

Hind Tradex Ltd.,
C/o S.B. Garg & Co., CAs,
20/17, Shakti Nagar,
New Delhi.

Vs ACIT,
Circle-11(2),
New Delhi.

PAN: AACCH6542B

(Appellant)

(Respondent)

Assessee by	:	Shri Sachin Kumar, CA
Revenue by	:	Ms Maimun Alam, Sr. DR
Date of Hearing	:	27.04.2023
Date of Pronouncement	:	06.06.2023

ORDER

PER M. BALAGANESH, AM:

The appeal in ITA No.6859/Del/2019 for AY 2015-16, arises out of the order of the Commissioner of Income Tax (Appeals)-4, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No.06/18-19/CIT(A)-4 dated 22.05.2019 against the order of assessment passed u/s 271F of the Income-tax

Act, 1961 (hereinafter referred to as 'the Act') dated 09.03.2018 by the Assessing Officer, Circle-11(2), New Delhi (hereinafter referred to as 'Id. AO').

2. The only issue to be decided in this appeal is as to whether the Id.CIT(A) was justified in confirming the levy of penalty u/s 271F of the Act, in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. We find that the return of income for AY 2017-18 has been filed by the assessee electronically on 07.11.2017 declaring total income of Rs.2,16,170 with ITO, Ward 11(3), Delhi. In the instant appeal for AY 2015-16, the show-cause notice for initiating penalty proceedings u/s 271F r.w.s. 274 of the Act was issued on 26.02.2018 by the Id.ACIT, Circle-11(2), New Delhi. The contention of the assessee is that on 26.02.2018, pursuant to the return of income filed by the assessee declaring total income of Rs.2,16,170/- for AY 2017-18, the jurisdiction of the assessee in terms of CBDT Instruction No.1/2011 dated 31.01.2011 vests with ITO and not ACIT. In other words, since the income declared by the assessee for AY 2017-18 is less than Rs.30 lakhs, the jurisdiction of the assessee based on pecuniary limits as per CBDT Instruction No.1/2011 dated 31.01.2011 would be with ITO. In fact, the return of income for AY 2017-18 already was filed by the assessee with ITO, Ward 11(3) Delhi. While this is so, the Id.ACIT, Circle 11(2), New Delhi cannot have jurisdiction on 26.02.2018 while issuing show-cause notice for initiating penalty proceedings u/s 271F of the Act for AY 2015-16. In fact, from the documents placed on record before us, we find that the Id.ITO, Ward-11(3), Delhi had issued even notice u/s 148 of the Act dated 30.03.2017 for AY 2010-11. This goes to prove that even as on 30.03.2017, the jurisdiction of the assessee was only with ITO, Ward-11(3), Delhi and not ACIT,

Circle 11(2), New Delhi. Further, we find from pages 6 and 7 of the paper book, a notice u/s 143(2) of the Act was issued on 20.09.2018 for AY 2017-18 by ITO, Ward 11(3), Delhi. Even 11 months prior to initiation of penalty proceedings u/s 271F of the Act, the jurisdiction of the assessee was with ITO and even seven months after the initiation of penalty proceedings u/s 271F of the Act, the jurisdiction of the assessee was only with ITO, Ward 11(3), Delhi. Hence, it could be safely concluded that the Id.ACIT, Circle-11(2), New Delhi never had jurisdiction with assessee during this period of initiation of penalty proceedings u/s 271F of the Act. We find, ultimately, the penalty order u/s 271F of the Act was passed on 09.03.2018 by ACIT, Circle 11(2), New Delhi who does not have jurisdiction over the assessee in view of the reasons stated above. Hence, we have no hesitation in cancelling the levy of penalty in the facts and circumstances of the instant case for want of valid jurisdiction. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06.06.2023

-Sd/-
(C.M. GARG)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:06th June, 2023.

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

Asstt. Registrar, ITAT, New Delhi