

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "C", KOLKATA**  
**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**  
**AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 342 & 343/Kol/2023**  
**Assessment Year: 2016-17 & 2017-18**

Tulshi Charan Roy  C/o. Jain Vinod K & Associates, 41A, A.J.C. Bose Road, Suite No. 613, 6 <sup>th</sup> Floor, Kolkata-700017.  <b>PAN: AEFPR 7114 F</b>	Vs.	ITO, Ward-1(1), Durgapur
(Appellant)		(Respondent)

**Present for:**

Appellant by : Shri V.K. Jain, FCA  
Respondent by : Shri G. Hukugha Sema, CIT

Date of Hearing : 31.05.2023  
Date of Pronouncement : 12.06.2023

**ORDER**

**PER RAJESH KUMAR, AM:**

These appeals of the assessee are directed against the orders dated 08.03.2023 & 13.03.2023 for the assessment year 2016-17 & 2017-18 respectively passed by the Id. Commissioner of Income-tax Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)'].

2. The assessee has challenged the order of Id. CIT(A) confirming the imposition of penalty as levied by the AO u/s 271(1)(c) of the Act by the AO.

3. The facts in brief are that the original return was filed declaring gross salary of Rs. 8,45,540/- on 9.7.2016. Thereafter the return of income was revised on 20.11.2016 with total income of Rs. 7,45,540/- by claiming refund of Rs. 14,420/-. The assessee again revised the return of income on 15.06.2017 declaring income at Rs. 5,78,660/- by claiming refund of Rs.54,980/-. On the basis of

information available with the AO it was noticed that assessee has claimed deduction under Chapter VIA vis-à-vis the deduction of Form 16. Consequently the case of the assessee was re-opened u/s 147 of the Act after recording reasons of reopening u/s 148(2) of the Act and accordingly notice u/s 148 of the Act was issued on 14.03.2020. Pertinent to note that the return was processed and a refund of Rs. 54,780/- was issued to the assessee. Thereafter, the assessee deposited back the money into the Govt. Treasury Rs. 55,580/- in cash as self-assessment tax on 25.03.2019. There was no compliance on the part of the assessee and finally assessment was framed u/s 144/147 of the act vide order dated 23.09.2021 by making an addition of Rs. 4,14,878/- comprising Rs.1,82,366/- on account of salary difference and Rs. 2,32,512/- on account of excess claim of deduction. The assessee also filed return of income in response to notice u/s 148 on 09.09.2021 which was treated by the AO as non-est on the ground that assessee has filed the return of income beyond 30 days from the issue of notice of notice u/s 148 of the act i.e. 30 days from 09.03.2020. In other words, return was filed in response to notice u/s 148 on 09.09.2021, the assessee has correctly returned the income and hence the difference in income of original income(pursuant to which the refund was granted). Finally the assessment was framed u/s 144 r.w.s. 147 of the Act. The AO issued notice u/s 271(1)(c) giving show cause notice as to why the penalty should not be levied for filing inaccurate particulars of income. Finally penalty was levied of Rs. 90,000/- for furnishing inaccurate particulars of income vide order dated 11.01.2022.

4. The ld. CIT(A) simply affirmed the order of AO by holding that assessee has not appeared nor filed any submission before the AO

as well as before CIT(A) and hence dismissed the appeal without considering the merits of the case.

5. After hearing rival submissions of the parties and perusing the material on records, we observe that the assessee has undisputedly claimed an excess deduction under Chapter VIA in the original return filed on 15.06.2017 and claimed refund of Rs. 54,980/- which was also accordingly granted to the assessee. We note that the case of the assessee was re-opened u/s 147 of the Act by issuing notice u/s 148 of the Act on 04.03.2020. The assessee filed return of income in response to notice u/s 148 of the Act disclosing the correct income and making correct claim under chapter VIA on 09.09.2021. The said return was treated as non-est by the AO for the reasons that this was filed beyond 30 days from the date of notice issued u/s 148 of the Act which in our opinion is in violation of order passed by the Hon'ble Apex Court dated 10.01.2022 wherein the Hon'ble Court has restored the order dated 23.03.2020 and in continuation of subsequent order dated 08.03.2021, 27.04.2021 and 23.09.2021 directed that period from 15.03.2020 till 28.02.2022 shall be excluded from period of limitation as may be prescribed under general or special laws in respect of all judicial or quasi judicial proceedings. Since the assessee has filed the return on 09.09.2021 which is within the above period as directed to be excluded by the Hon'ble Apex Court , therefore, the said return shall be deemed to have been filed within due limitation. We also note that the Id. CIT(A) has failed to appreciate the issue and confirmed the penalty in a mechanical manner. No penalty is leviable on the difference of income between the return revised on 15.06.2017 and the return in response to notice u/s 148 of the Act as the assessee has returned the correct income. We also note that the assessee has

deposited the refund received by depositing Rs. 55,580/- as self asstt. tax vide challan dated 25.03.2019 whereas the case of the assessee was re-opened u/s 147 of the Act on 4.3.2020. Accordingly, we are inclined to set aside the order of ld. CIT(A) and direct the AO to delete the penalty. The appeal of the assessee is allowed.

6. The issue raised in ITA 343/Kol/2023 for A.Y. 2017-18 is identical one as decided by us in ITA 343/Kol/2023 for A.Y. 2017-18. Accordingly, our decision in ITA 342/Kol/2023 for A.Y. 2016-17 shall, *mutantis mutandis*, apply to this appeal as well. Consequently, the appeal of the assessee is allowed by setting aside the order of ld. CIT(A) and AO is directed to delete the penalty.

7. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 12.06.2023**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated:12.06.2023  
Biswajit

Copy to:

1. The Appellant: Tulshi Charan Roy.
2. The Respondent: ITO, Ward-1(1), Durgapur.
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata