

**IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH: GAUHATI
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. Nos.34 to 37/Gau/2020
Assessment Years: 2014-15 to 2017-18**

Shri Manoj Kumar Jajodia (PAN: ABWPJ 6883 F)	Vs.	ITO, Ward-2, Shillong
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	26.04.2023
Date of Pronouncement / आदेश उद्घोषणा की तिथि	16.06.2023
For the Appellant / निर्धारिती की ओर से	Shri Sanjay Mody, FCA
For the Respondent / राजस्व की ओर से	Shri N. T. Sherpa, JCIT

ORDER/ आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)- Guwahati-2, Guwahati [hereinafter referred to as ‘Ld. CIT(A)’] dated 28.11.2019 for the assessment years 2014-15 to 2017-18. Since the issue involved in all these appeals are common, these are being disposed off together for the sake of brevity and convenience.

First we shall take in ITA No. 34/Gau/2020 for AY 2014-15.

2. The assessee has challenged the order of Ld. CIT(A) on the legal issue as well as on merit. The legal issue raised by the assessee is that the Ld. CIT(A) has erred in upholding the order of AO passed u/s 271(1)(c) of the Act wherein the AO has not recorded a finding whether the penalty is furnishing in accurate of income or for concealment of income and therefore the penalty order passed by the AO is nullity and invalid.

3. Facts in brief are that the assessment was framed u/s 143(3) of the Act vide order dated 19.11.2018 declaring total income at Rs. 14,15,910/-. The proceedings u/s 271(1)(c) of the Act read with Section 274 was initiated on 22.11.2018. Thereafter the notice was issued u/s 271(1)(c) of the Act on 09.01.2019 to the assessee to explain as to why penalty should not be imposed for furnishing inaccurate particulars of income. It was noted by the AO in the assessment proceedings that the assessee had deposited cash into the bank accounts and the assessee has not maintained proper accounts and accordingly the income of the assessee was estimated at 10.50% of the deposits/receipts as per bank account which were Rs. 50,78,462/- whereas receipts as per ITR were Rs. 36,57,476/-. So the difference was calculated at Rs. 14,20,986/- on account of cash deposit and income was estimated at Rs. 1,49,203.53 @ 10.50%. The AO also noted that during the survey u/s 133A of the Act, the assessee had disclosed Rs. 8,00,000/- by using bank account of Shri Kynton Lyngrah bearing account of No. 23301930001377 as unexplained money. However in a submission dated 15.11.2017 the assessee had stated during the year, the assessee had deposited a sum of Rs. 76,45,000/- on various dates in the bank account no. 0001377 which belonged to the above person and if the income is estimate @ 10.50% it worked out to Rs. 8,02,725/-. So the difference of Rs. 8,02,725/- and amount disclosed during survey should be added to the income of the assessee. The AO, after rejecting the contentions and arguments of the assessee, held that the assessee has failed to explain with reasons as to why the assessee filed inaccurate particular of income by not disclosing the said transactions and thus assessee has concealed the income by furnishing inaccurate particulars. Accordingly a penalty was imposed of Rs. 1,92,972/- being equal to 100% of the tax sought to be evaded vide order dated 21.05.2019 passed u/s 271(1)(c) of the Act. The assessee has pointed out that there is mistake in the calculation of the penalty which according to the assessee worked out to Rs. 46,946/- and not Rs. 1,92,972/-

3. The assessee challenged the penalty order before the first appellate authority however the appeal was dismissed by the Ld. CIT(A) on merit by holding that the

penalty can be imposed even if the income is estimated by the AO. However the legal issue was not adjudicated.

4. After hearing the rival contentions and perusing the material on record, we observe that in the order dated 19.11.2018 passed u/s 147 /143(3) of the Act, the AO noted that assessee has filed inaccurate particulars of income. Thereafter penalty proceedings were initiated by issuing notice u/s 271(1)(c) of the Act on 22.11.2018. However in the notice issued u/s 271(1)(c) of the Act, the AO has not stated whether the penalty proceedings were initiated for furnishing inaccurate particulars of income or for concealment of income. The AO observed that the levied was penalty for furnishing inaccurate particular for concealment of income. Considering these facts and circumstances and order passed by the AO as well as Id. CIT(A) , we are of the view that the AO casually passed the impugned order without giving concrete conclusion that under which of the two limbs the penalty was levied. In our opinion, the action of AO is highly casual and there is no application of mind at all. Accordingly we hereby quash the penalty order passed by the AO. The appeal of the assessee is allowed on legal issue.

5. Issue raised in all these appeals i.e. ITA NO. 35 to 37/Kol/2020 for AY 2015-16 to 2017-18 are similar to one as decided by us in ITA No. 34/Kol/2020 for AY 2014-15 (supra) and therefore our decision in ITA No. 34/Kol/2020 for AY 2014-15 would, mutatis mutandis, apply to these appeals as well. Consequently all the appeals of the assessee are allowed.

6. In the result, all the appeals of the assessee are allowed.

Order is pronounced in the open court on 16th June, 2023

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)
Accountant Member / लेखा सदस्य

Dated: 16th June, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Manoj Kumar Jajodia, Manoj Hardware Store, Bara Bazar, Shillong-793002
2. Respondent – ITO, Ward-2, Shillong
3. Ld. CIT(A)-Shillong
4. Ld. PCIT- , Gauhati
5. DR, Gauhati Bench, Guwahati

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata