

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.54/Asr/2023
Assessment Year: 2010-11**

Varinder Kumar B-17/74 Qadi Hatti, DhobianGaliBatala, Punjab. [PAN:-AUFPK4008D] (Appellant)	Vs.	ITO-Ward-2, Batala, Punjab. (Respondent)
----------------------------------------------------------------------------------------------------------------	-----	-----------------------------------------------------------

Appellant by	Sh. P. N. Arora, Adv.
Respondent by	Sh. Pradeep Kumar Sr.DR

Date of Hearing	14.06.2023
Date of Pronouncement	21.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals) -1, Amritsar, [in brevity 'the CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y. 2010-11. The impugned order was emanated from the order of the Id. ITO Ward-2, Batala (in brevity the AO) order passed u/s 271(1)(c) of the Act.

2. The assessee has filed an appeal with a delay of 198 days. The assessee filed a condonation petition in which he has requested that due to medical emergency and by Doctor's advice the assessee was in rest. So, the assessee unable to file the appeal within time. In this respect the assessee filed an Affidavit, duly executed by assessee himself and the reasons for delay are explained. The ld. DR had not made any objection for condonation of delay. Accordingly, the delay of 198 days is condoned.

3. The assessee has taken the following grounds:

“1. That the penalty order passed by the Income Tax Officer, Ward-2, Batala thereby levying penalty of Rs.5,09,784/- u/s 271 (1)(c) as well as the order of the Learned Commissioner of Income Tax (Appeals)-1, Amritsar, thereby confirming the penalty order passed by the Assessing Officer are both against the facts of this case and are untenable under the law.

2. That no reasonable and proper opportunity of being heard was allowed by the Assessing Officer before levying penalty of Rs.5,09,784/- @ 100% u/s 271(1)(c) of the IT Act, 1961. As such the penalty order passed is bad in the eyes of law and the same is liable to be cancelled and further the order passed by the worthy CIT(A) thereby confirming the penalty

order of the AO is also bad in the eyes of law and the same is also liable to be cancelled.

3. *That the Learned CIT(A) has grossly erred in confirming the order of the AO passed u/s 271(1)(c) without application of mind and without appreciating the facts of the case. As such the order of the CIT(A) is bad in the eyes of law and the same is liable to be cancelled.*

4. *That there was no justification for levying the penalty by invoking the provisions of section 68 and the provisions of section 68 are not at all applicable to the present facts and circumstances of this case as the assessee is not maintaining any books of accounts. The show cause notice u/s 274 r.w.s. 271(1)(c) accompanying the assessment order was not a legal and valid notice. As such the penalty order is bad in the eyes of law and the same is liable to be cancelled.*

5. *That the penalty notice was issued for concealment of income whereas the penalty was levied for concealing the particulars of income. As such the penalty order is bad in the eyes of law and the same is liable to be cancelled.*

6. *That the authorities below did not appreciate that the bank account was never operated by the assessee and it was operated by some unknown person whose name was Tajamal*

Pasta who misused my PAN in operating his bank account without my knowledge and permission. Thus, I did not have anything to do with the bank account operated upon by Tajamal Pasta. Thus grave injustice has been done and there was no reason and occasion for making any addition in my account. As such the penalty order is bad in the eyes of law and the same is the addition liable to be deleted.

7 *That the worthy CIT(A) did not appreciate that this case does not fall within the mischief of section 271(1)(c) of the IT Act, 1961. The CIT(A) did not appreciate that notices for hearing the appeal were never received by me. As such I could not appear before the Ld. CIT(A). As such the order is bad in the eyes of law and the same may be cancelled.*

8. *That the Ld. CIT(A) has decided the case by following the decision of ITAT, Delhi Bench in the case of CIT vs. Multiplan India Ltd. reported in 38 ITD 320. As such he should have also decided the appeal on law as well as on merits also which the CIT(A) has miserably failed to do so which is against the principle of natural justice. As such the order of the CIT(A) is bad in the eyes of law and the same is liable to be cancelled and the penalty confirmed may be cancelled.*

Alternatively, without prejudice to the above, the penalty levied is very high & excessive.

9. *That any other grounds of appeal which may be argued at the time of hearing of the appeal.”*

4. Brief fact of the case is that the penalty proceeding was initiated against the assessee u/s 271(1)(c) in pursuance of assessment U/s 144 of the Act and penalty was levied amount to Rs.5,09,784/-. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) passed an order without considering the fact of the case, without discussing the ground of the assessee and upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

5. The Id. AR for the assessee first informed that the appeal order was passed *ex parte* without considering the fact of the case. The reasonable opportunity was denied for submission of the evidence in favour of the assessee during appeal proceeding.

6. On the other hand, the Id. DR placed that the assessee was issued notice for appearance but none of the notice was complied. The Id. DR fully relied on the order of the revenue authorities.

7. We heard the rival submission and relied on the documents available in the record. Considering the appeal order in factual matrix the Id. appellate authority

had allowed two hearing dates to assessee for representing the matter. The Id. AR placed that no notice was received by the assessee from the appellate authority. We find that the reasonable opportunity was denied for the assessee to represent the matter before the Id. CIT(A) due unserved notice. With the consent of both the parties the matter is set aside to the Id. CIT(A) for further adjudication *de novo*. Needless to say, the assessee should get reasonable opportunity of hearing in the set aside proceeding.

8. In the result, the appeal of the assessee bearing ITA No. 54/Asr/2023 is allowed for statistical purposes.

Order pronounced in the open court on 21.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order