

**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. 47/Asr/2023
Assessment Year: 2011-12

Mr. Tirlok Nath Mahajan (HUF) 7-R, Industrial Area-B, Ludhiana-141003	Vs.	The ITO Ward-1(3), Jammu
PAN: AAAHT5728E		
APPELLANT		RESPONDENT

Assessee by : Sh. Gaurav Sharma, CA
Revenue by : Sh. Pradeep Kumar, Sr. DR

Date of Hearing : 15/06/2023
Date of Pronouncement : 20/06/2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal, is filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 28/11/2022 for the Assessment Year 2011-12.

2. In the present appeal, assessee has raised the following grounds:

1. *That the Learned Commissioner of Income Tax (Appeals) has erred in law and facts of the case by sustaining the penalty amounting to Rs. 1,82,938/- imposed by the Learned Assessing Officer under Section 271(1)(c) of the Act.*

2. *That the above imposition of penalty made in the case of the Appellant is against the facts and circumstances of the case.*
3. *That the Appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed off.*

3. At the outset, the Ld. Counsel for the assessee submitted that the Learned Commissioner of Income Tax (Appeals) has erred in law and facts of the case by sustaining the penalty amounting to Rs. 1,82,938/- imposed by the Learned Assessing Officer under Section 271(1)(c) of the Act without appreciating the facts of the case. The Ld. AR submitted that in the quantum appeal, the Ld. CIT(A) has accepted the facts regarding the filing of computation of income showing the interest income of Rs.10, 78,701 with the details of TDS deducted of Rs. 1,07,870/- u/s 194A of the Act as per 26AS, besides self-assessment Tax payment of Rs.81,000/-. Accordingly, he directed the AO to verify the TDS and Self-Assessment Tax payment claims of the appellant assessee and allow the same as per law. He contended that the Ld. CIT(A) observation vide para 4.1 of the impugned order that “It is seen that appeal against the original order from which penalty proceedings originated was dismissed” is itself contradictory and factually incorrect. He pleaded that penalty matter may be restored to

the AO to adjudicate after giving appeal effect on verification of Tax payment details as per provisions of Explanation 3 to clause c of section 271(1) of the Act as per mandate.

4. Per contra, the Ld DR although supported the impugned order, however, he failed to rebut the contention of the counsel.

5. We have heard the rival contentions, perused the material on record, impugned order, written submission filed before us. Admittedly, the Ld. CIT(A) has accepted the facts regarding the filing of computation of income showing the interest income of Rs.10, 78,701 with the details of TDS deducted of Rs. 1,07,870/- u/s 194A of the Act as per 26AS, besides self-assessment Tax payment of Rs.81,000/- while allowing the quantum appeal of the assessee for statistical purpose with the direction to the AO to verify the TDS and Self-Assessment Tax payment claims of the appellant assessee and allow the same as per law. We find that the Ld. CIT(A) observation vide para 4.1 of the impugned order that “It is seen that appeal against the original order from which penalty proceedings originated was dismissed” is factually incorrect.

6. In our view, the Ld. CIT(A) ought to have verified the claim of the appellant regarding its claim of TDS deducted of Rs. 1,07,870/- u/s 194A of the Act as per 26AS, and self-assessment Tax payment of Rs.81,000/- while adjudicating the quantum appeal of the assessee and thus decided the appeal on merits as against remanding to AO for statistical purpose to the AO for verification of the TDS and Self-Assessment Tax payment claims of the appellant assessee and allowing as per law. Further, the CIT(A) has acted in arbitrary manner and mechanical manner in confirming the appeal without calling for remand report of the AO on the status of the appeal effect given to its decision in quantum appeal. However, facts regarding aforesaid claims of the appellant regarding TDS and self-assessment are yet to be verified from the record by the AO who is the competent authority.

7. In view of the facts discussed as above, we consider it deem fit to restore back the matter to the file of the Ld. AO to verify and allow the claim of the appellant assessee as per law regarding the TDS deducted of Rs. 1,07,870/- u/s 194A of the Act as per 26AS, and self-assessment Tax payment of Rs.81,000/- for the year under consideration in consequence to appeal effect to the decision of the CIT(A) in quantum appeal. Accordingly,

the case is remanded to the AO with the direction to adjudicate the issue levy of penalty as per provisions of Explanation 3 to clause c of section 271(1) of the Act as per mandate after granting sufficient opportunity of being heard to the assessee and that the AO shall issue a Show Cause Notice on the issue of penalty and thereafter pass a reasoned order in accordance with law. Accordingly, the impugned order is set aside and the matter is remanded to assessing authority to pass de novo penalty order as per law.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20/06/2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

*A.G/DOC**

Copy of the order forwarded to:

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

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By Order