

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. KUL BHARAT, JUDICIAL MEMBER
AND
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.907/Del/2019
(Assessment Year : 2010-11)

Sheetal Mehra QP-40, 2 nd Floor, Pitampura, New Delhi-34 PAN No. AJAPM 1364 J (APPELLANT)	Vs.	ITO Ward – 40(1) New Delhi (RESPONDENT)
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Assessee by	Shri Snehil, Adv.
Revenue by	Shri Anuj Garg, Sr. D.R.

Date of hearing:	17.07.2023
Date of Pronouncement:	17.07.2023

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-14, New Delhi ('CIT(A)' in short) dated 05.12.2017 arising from the penalty order dated 23.03.2017 passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (the Act) for the Assessment Year 2010-11 in question.

2. As per the ground of appeal, the assessee has challenged the action of the CIT(A) confirming the penalty of Rs.2,16,133/- levied u/s 271(1)(c) of the Act by the Assessing Officer.

3. At the time of hearing, it transpired that while initiating the penalty proceedings u/s 271(1)(c) of the Act in the course of assessment proceedings, the Assessing Officer formed 'satisfaction' towards Concealment of Particulars of Income towards alleged unexplained cash deposits in question. However, on perusal of the penalty order passed by AO, it was noticed that the Assessing Officer has imposed penalty on a different premise i.e. furnishing inaccurate particulars of income. The CIT(A) in the first appeal confirmed the action of the AO on the grounds of 'concealment of particulars of income' de horse the penalty imposed by AO alleging furnishing inaccurate particulars of income.

4. In this factual background, it is apparent that the basis and foundation for imposition of penalty has been altered by AO himself while imposing the penalty in departure to satisfaction formed in the course of assessment proceedings. It is also ostensible from the findings recorded by the CIT(A) that penalty has yet again been confirmed on a different premise. Thus the original satisfaction for imposition of penalty has been altered and modified firstly by the AO and thereafter by the CIT(A). In such circumstances, where the original basis of imposition of penalty has been altered in a significant way both by the AO as well as by the CIT(A), the very basis for sustaining the penalty is rendered non-existent.

5. Needless to say, the imposition of penalty is solely dependent upon the initial 'satisfaction' of the AO in the course of assessment. The ground for initiating action against the assessee by the AO was

initially 'concealment'. This ground was substituted by the AO to 'furnishing inaccurate particulars of income' while imposing the penalty quantified by the AO. In the first appeal, the CIT(A) again confirmed the action of the AO but however on the grounds of concealment.

6. Thus, in the absence of continuity in the action of the AO and CIT(A), the imposition of penalty is liable to be struck down on this ground alone. For such a view, we may usefully refer to the decision of the Hon'ble Gujarat High Court in the case of New Sorathia Engineering Company vs. CIT (2006) 282 ITR 642 (Guj.) and decision of the Co-ordinate Bench in the case of A2Z Maintenance & Engineering Services Limited vs. DCIT and others ITA No.2631/Del/2018 and ors. order dated 28.03.2023. In essence, where the concerned IT authorities are not sure about the nature of default, the panel action u/s 271(1)(c) of the Act is not sustainable in law.

7. Consequently, the penalty imposed u/s 271(1)(c) of the Act in question is set aside and cancelled.

8. Since, the imposition of penalty stands deleted on the aforesaid legal ground, we are not inclined to deal with other aspect of the arguments raised on behalf of the assessee for deletion of penalty.

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

Order pronounced in the open court on 17.07.2023

Sd/-

(KUL BHARAT)

JUDICIAL MEMBER

Date:- 17.07.2023

*Priiti Yadav**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(PRADIP KUMAR KEDIA)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI