

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'A' : NEW DELHI)**  
**BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER**  
**AND**  
**SH.ANUBHAV SHARMA, JUDICIAL MEMBER**  
ITA No. 3214/Del/2017, A.Y. 2001-02

Smt. Anu Nagpal M-134, Greater Kailash, Part-1, New Delhi PAN : ACTPN4363Q	Vs.	ACIT, Circle-23(1), New Delhi
Appellant		Respondent

Assessee by	Sh. Mayank Ahuja, Adv.
Revenue by	Sh. Kanv Bali, Sr. DR

Date of hearing:	26.07.2023
Date of Pronouncement:	26.07.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The assessee has filed this appeal against the order dated 27.03.2017 passed by the Commissioner of Income Tax (Appeals)-10, New Delhi confirming the imposition of penalty of Rs. 6,30,000/- u/s 271(1)(c) of the Income Tax Act, 1961.

2. Heard and perused the record.
3. It comes up that earlier in the first round of litigation the co-ordinate Bench in ITA no. 5582/Del/2013 dated 22.09.2016 had restored the issue of

service of notice for initiating penalty proceedings to the files of Ld. CIT(A) and Id. CIT(A) has passed the impugned order wherein after considering the submissions of the assessee dated 23.03.2017, Ld. CIT(A) observed that the service of notice by affixture was valid as there was solemn affirmation by the Inspector of due service.

4. The Bench is of considered opinion that since assessee has not disputed that the address was incorrect or that he was not residing at the address, therefore, had no notice of the notices served by affixture, the presumption attached to official acts where done in due course, can be raised and the service has been considered to be proper. Thus, on that count assessee does not succeed.

5. However, what comes up from the matter on record, on merits is that assessee had claimed an amount of Rs. 21 lakhs were received by her as a gift from Sri Raman Kumar Juneja whose own statement on oath was also recorded during the assessment proceedings. But Ld. AO finding contradictions in the statement of donor and also assessee disbelieved the gift.

6. The penalty proceedings u/s 271(1) (c) of the Act do not indicate specifically as to if the same were initiated on account of concealment of income or for furnishing of incorrect particulars. The concluding of penalty order in para 4 is relevant where Id. AO mentions that the penalty is levied on the amount added for which 'inaccurate particulars' has been furnished.

7. The Bench is of considered opinion that disbelieving a transaction on the basis of doubting of veracity of a witness cannot be a case of furnishing inaccurate particulars without bringing evidence in affirmative disproving the particulars stated. Which is not the case here as mere on his opinion to not accept the on oath statement of donor, the gift was disbelieved.

8. There is no force in the contradiction of Ld. DR that as assessee has not challenged the addition by way of appeals, therefore, the penalty order is justified. The two set of proceedings are different and have different parameters for sustenance of the orders on merits. The ground no 1 as raised is sustained and **the appeal of assessee is allowed**. The impugned order stands quashed.

**Order pronounced in the open court on 26<sup>th</sup> July, 2023.**

**Sd/-**

**(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:- 26.07.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI