

**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. 25/Asr/2019
Assessment Year: 2007-08

Sh. Ashok Kumar
H. No. 1468, Street No. 3,
Zira Road, New Sodhi Nagar,
Moga

[PAN: AKJPL 7041G]
(Appellant)

Vs. Income Tax Officer,
Ward 1, Moga

(Respondent)

Appellant by : Sh. Tarun Bansal, Adv.

Respondent by: Sh. Mohit Kumar Nigam, Sr. DR

Date of Hearing: 01.08.2023

Date of Pronouncement: 03.08.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Ludhiana dated 24.10.2018 in respect of Assessment Year: 2007-08.

2. The counsel has raised the amended grounds of appeal vide application dated 30.06.2023 which reads as under:

- “1. That Ld. A.O has not recorded any satisfaction in quantum order indicating on which limb he is relying to levy penalty u/s 271(l)(c) and is bad-in-law.
2. That Ld. A.O has not recorded/ indicated the limb on which he has levied penalty u/s 271(l)(c) in his penalty order and is bad-in-law.
3. That the quantum order of the appellant has been remitted back by Hon'ble ITAT dtd. 12-05-23 to A.O for fresh adjudication on the basis of evidence/ explanations submitted by appellant before ITAT, Hence no penalty stands when the matter is denovo to A.O.”

3. At the outset, the Id. counsel for the appellant has submitted that the appeal of the assessee in quantum addition has been remitted to the AO by the Tribunal to pass denovo assessment order in ITA No. 608/Asr/2017 vide Tribunal order dated 12.05.2023 with the direction to adjudicate afresh after considering the evidence and an explanation filed by the assessee on record. Accordingly, he requested that the penalty may also be remanded back to the AO, as no penalty stands when the matter is remanded back to the AO to pass denovo assessment.

4. Per contra, the Id. DR failed to rebut the contention of the Id. counsel.

5. Heard both the sides, perusal of the record and the impugned order.

We find that the quantum appeal of the assessee has been restored to the AO to pass denovo assessment order after examining the evidence and explanations filed on record and granting sufficient opportunity of being heard. In our view, the penalty levied u/s 271(1)(c) shall not be maintainable when the quantum addition is set aside by Tribunal to the file of the Assessing Officer. We make it clear that the AO shall be at liberty to initiate the penalty proceedings afresh on the basis of its finding in the denovo assessment proceedings. Accordingly, penalty levied u/s 271(1)(c) is set aside.

6. In the backdrop of the aforesaid discussion, the appeal of the assessee is disposed of in the terms indicated as above.

Order pronounced in the open court on 03.08.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr.PS

Copy of the order forwarded to:

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

True Copy
By Order