

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
&  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.699/Del/2023**

**[Assessment Year : 2016-17]**

Harbans Lal Chadha House No. 324, Dr. Mukherjee Nagar, North West Delhi, New Delhi <b>PAN: AACPC8190M</b>	v s	ITO Ward-35(4) New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Vinod Kumar Gupta, Adv	
<b>Respondent by</b>	Shri Vivek Kumar Upadhyay, Sr. DR	
<b>Date of Hearing</b>	20.11.2023	
<b>Date of Pronouncement</b>	22.11.2023	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals), (national Faceless Appeal Centre) Delhi, dated 27/01/2023 pertaining to the Assessment Year 2016-17. The assessee has raised the following grounds of Appeals.

*“1. That Ld. both the authorities below are bad in law and against the facts and circumstances of the case in passing such orders specifically appeal order passed by Ld. CIT (Appeals), New Delhi.*

*2. That the Ld. First Appellate Authority is wrong in sustaining order u/s 271(1)(b) of the Income Tax Act, 1961 which was originally passed by Ld. ITO.*

*3. That all the grounds taken by appellant while hearing of First Appeal where hearing happened in NFAC mode before Ld. CIT have been dismissed by observing that contention of the appellant remained not tenable. By this way appeal dismissed is against not only against the Law but against facts and circumstances as well as merit of the case.*

*4. That the orders passed by both the authorities below remained arbitrary and of a nature of surmise remained without enough opportunity of being heard.*

*5. That the appellant is Super Senior Citizen which deserves justice in favor from this Hon'ble Court in view of the merits of the case vis-à-vis in view of pendency of second appeal against assessment order pending for disposal before this Hon'ble court.”*

2. The facts in brief are that, the assessee filed its return of income on 31/03/2018 declaring income of Rs. 2,91,490/-. The case was selected for scrutiny assessment during the course of assessment proceedings, the Assessing Officer issued notices which were not complied by the assessee, therefore, the Assessing Officer initiated penalty proceedings u/s 271(1)(b) of the Act, thereafter vide penalty order dated 30/10/2018, the Assessing Officer imposed a penalty of Rs. 10,000/- for non compliance of the statutory notice.

3. Aggrieved against this, the assessee preferred appeal before the Ld.CIT(A) who sustained the penalty, now the assessee is in Appeal before this Tribunal.

4. Heard the Ld. Authorized Representative of the parties. The Ld. Counsel apropos to these grounds contended that the Tribunal vide order dated 17/03/2023 was pleased to delete the impugned addition in quantum proceedings. He drew our attention to the order of the Tribunal in ITA No. 8262/Del/2019, further he contended that the assessment order was framed u/s 143(3) of the

Act, therefore, the Assessing Officer should not have levied the impugned penalty.

5. The Ld. Counsel further placed reliance on the decision of the Co-ordinate Bench of this Tribunal in ITA No. 2104/MDS/2012 in the case of Sardarmal Kothari Vs. ACIT vide order dated , wherein the Tribunal was pleased to decide the identical issue as under:-

*“6. We have heard both sides. Perused the materials on record and the orders of authorities below. We have gone through the decisions relied on by the Counsel for the Assessee. In both these decisions, the Tribunal held that when an assessment has been made under sec.143(3) and not under sec.144 of the I.T. Act, it means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the Assessing Officer and, therefore, there is no case for levy of penalty under sec.271(1)(b) of the Act. In the present case, the assessee seems to have co-operated with the assessment proceedings by responding to the notices and filing information called for and the assessment was completed under sec.143(3) and not sec.144 of the Act. Therefore, we hold that there is no case for levy of penalty under sec.271(1)(b) of the I.T. Act the assessee’s case.”*

Therefore, by respectfully following the same, we hereby direct the Assessing Officer to delete the addition.

6. In the result, the Appeal filed by the assessee is allowed.

Order pronounced in the open Court on 22<sup>nd</sup> November, 2023

**Sd/-**

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**  
22/11/2023

*\*R.N\**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI