

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.1774/DEL/2023
(Assessment Year: 2012-13)**

Leapfrog,
A-14, Third Floor,
Gulmohar Park,
New Delhi – 110 049.

vs.

ITO, Ward 29 (1),
New Delhi.

(PAN : AAATL3565D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Nitin Kanwar, Advocate
Shri Rajeev Kumar, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 11.01.2024
Date of Order : 14.02.2024

ORDER

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 06.04.2023 for the assessment year 2012-13.

2. Although the assessee has raised various grounds, the only issue pertains to penalty levied under section 271(1)(c) of Income-tax Act, 1961 (for short 'the Act').

3. Brief facts of the case are that the assessee did not file its return of income as required under section 139 of the Act. As per the non-filer

management system of the Income Tax Department, the assessee had received the following payments on which TDS has been made :-

Amount of payments received (Rs.)	Tax deducted under section
3,90,31,588/-	194C
11,40,878/-	194J

On the basis of the above information, the case was taken up for assessment under section 147 of the Act and the notice u/s 148 was issued to the assessee on 29.03.2019. But no return of income was filed even against the notice u/s 148 of the Act. Neither any compliance was made during the assessment proceedings. As a result, the assessment was completed u/s 144 of the Act on 02.12.2019 at the assessed income of Rs.69,95,616/- (Rs.58,54,738/- which is 15% of the contractual receipts on which tax has been deducted u/s 194C of the Act plus the whole of the professional and technical receipts).

3.1 This income of Rs.69,95,616/- was treated as concealed income and penalty proceedings were initiated u/s 271(1)(c) of the Act for concealing the particulars of income. On the issue of concealment of income, the assessee has submitted that tax was deducted on the receipts and therefore, there is no concealment. Further, assessee submitted that it must be noted that the tax deducted at source is only a withholding tax which can be more or less than the actual tax payable. AO noted that in this case of the assessee, the tax deducted is less than the assessed tax of Rs.21,61,647/-.

Further, in the assessed tax, various interests have not been included. So, there is very much concealment of income and thereby that of tax too by the assessee. Taking a lenient view, as the assessee was cooperative during the last stage of the proceedings, minimum penalty of Rs.21,64,647/- @ of 100% of the tax that the assessee sought to evade is hereby imposed on the assessee.

4. Upon assessee's appeal, ld. CIT (A) in an ex-parte, cryptic and non-speaking order confirmed the penalty.

5. Against this order, assessee has filed appeal before me. I have heard both the parties and perused the records.

6. I find that ld. CIT (A) passed a very cryptic and non-speaking order. The assessee also asked for virtual hearing but the same did not materialise. Hence, in my considered opinion, the interest of justice will be served if the matter is remanded to the file of ld. CIT (A). Ld. CIT (A) shall pass a speaking order after giving the assessee proper opportunity of being heard.

7. In the result, the appeal of the assessee is allowed for statistical purposes..

Order pronounced in the open court on this 14th day of February, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 14th day of February, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**