

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 727/DEL/2024

Assessment Year: 2020-21

Surendra, Door no. 16-17, SL Tower, ALPHA-I, Greater Noida, Gautam Budh Nagar-201308. PAN- DDZPS9114J	<u>Vs</u>	Income-tax Officer, Ward-3(4), Noida.
APPELLANT		RESPONDENT
Assessee represented by	Shri Raghuraj Singh Adv.	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	18.03.2024	
Date of pronouncement	18.03.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 09.02.2024, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.

2. That the impugned Assessment order passed by the Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.

3. That Learned Assessing Officer has grossly failed in applying the basic principle of law and justice while framing the Penalty Order u/s 271(1)(c) of

the Income Tax Act 1961 without giving sufficient opportunities of being heard.

4. That Learned Assessing Officer has erred in law as well as on facts in determining the taxable income and Penalty under section 271(1) (c) of the Income Tax Act 1961.

5. That on facts and circumstances of the case and in Law, That The addition made by the A.O. is one-sided order, in addition to this, the quantum appeal is still pending and is in appeal, so it is not in the interest of justice to impose penalty without disposing of the quantum appeal. Therefore, there cannot be any tax penalty/liability and the said cash deposited explained as u/s 68 of Income tax act 1961.

6. That the impugned penalty order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.

7. That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.

8. That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.”

2. Facts of the case, in brief, are that the AO received AIR information that assessee had cash deposit amounting to Rs. 39,00,000/- during A.Y. 2012-13. The AO also noticed that the assessee had not filed his ITR for A.Y. 2012-13. The assessee did not respond to the statutory notices issued by the AO. Therefore, the AO proceeded to make ex parte assessment to the assessee u/s 144/147 of the Act and vide order dated 29.12.2019 completed the assessment at a total income of Rs. 39,00,000/- by adding the cash deposits of Rs. 39,00,000/- as unexplained money. The AO also initiated penalty proceedings u/s 271(1)(c) of the Act and vide penalty order dated 28.01.2022 levied a penalty of Rs. 10,52,660/- for concealing the particulars of income @ 100% of the tax sought to be evaded u/s 271(1)(c) of

the Act. Aggrieved, against this the assessee preferred appeal before the learned CIT(A), who also affirmed the penalty order passed by the AO. Aggrieved against this the assessee is in appeal before this Tribunal.

3. I have heard rival submissions and perused the material available on record. The stand of the assessee is that the learned CIT(A) has erred in disposing of penalty appeal without disposing of the quantum appeal. Learned DR could not rebut the contention made on behalf of the assessee. I, therefore, set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of learned CIT(A) to decide it afresh after disposing of the quantum appeal. Grounds are allowed for statistical purposes.

4. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 18th March, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**