

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.6434/DEL/2019
Assessment Year 2013-14

Dipesh Singh Legal Heir of Late Nitya Nand 438, Yadav Niwas, Kasan Road Village Manesar, Gurugram TAN/PAN: ALWPN9240N (Appellant)	Vs.	ITO Ward-3(1) Gurugram, Haryana (Respondent)
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Appellant by:	Shri Deepak Kataria, CA		
Respondent by:	Shri R.K. Jain, Sr.DR		
Date of hearing:	12	03	2024
Date of pronouncement:	21	03	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-II, Gurgaon ('CIT(A)' in short) dated 28.05.2019 in relation to the penalty order dated 31.03.2018 under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The solitary issue in the captioned appeal is justification of imposition of penalty amounting to Rs.9,11,340/- on account of failure of the assessee to explain the source of cash deposit in the bank account amounting to Rs.31,93,000/-.

3. In the matter, the Id. counsel for the assessee fairly submits that the Co-ordinate Bench of the ITAT in ITA No.6508/Del/2016 order dated 30.01.2020 has rejected the explanation of the assessee towards source of cash deposit and declined to interfere with the order of the CIT(A). The Id. counsel further submits that the penalty proceedings under Section 271(1)(c) are all together on different footings and is quite distinct in its nature.

3.1 As regards source of cash deposits, the ld. counsel submits that the deceased-assessee had received such amount from its relatives. The assessee submits that it is the matter of record that copy of ITR acknowledgement of uncle showing cash withdrawals in their account and corresponding deposit in the bank account of assessee was furnished. The ld. counsel submits that the mother of the deceased-assessee is not taxable since she is a farmer and the amount received on sale of agricultural land a part of which was given to assessee whereas the uncle of the assessee had filed return of income and the bank statement was also furnished. The ld. counsel thus submits that while such evidence might not have stood with the test of judicial scrutiny in the quantum proceedings, this by itself will not entitle the AO to impose penalty under Section 271(1)(c) as a matter of course. The burden which lay upon the assessee towards source of deposit is broadly explainable when seen in the context of penal liability under Section 271(1)(c) of the Act.

4. It is trite that burden of proof in the penalty proceedings varies from that in an assessment proceedings. Mere disallowance of expenditure or enhancement of returned income does not *ipso facto* call for imposition of penalty under Section 271(1)(c) of the Act. On facts, we note that the assessee has taken consistent stand towards source of cash deposits from his uncle and mother. The bank statement vouches for withdrawal of cash in the hands of relatives. The assessee thus has offered explanation in respect of source of cash deposit which may not have been accepted for the purposes of quantum proceedings but sustaining such addition in the quantum proceedings could not, in our view, warrant a conclusion that assessee has concealed certain particulars of income or furnished inaccurate particulars of income *per se*.

5. In the circumstances existing in the present case, we are inclined to agree with the contention on behalf of the assessee that discretion vested with the AO under Section 271(1)(c) ought to have been exercised in favour of the assessee and imposition of penalty is not justified. It is trite that imposition of penalty under Section 271(1)(c) is not automatic

and should not be imposed merely because it is lawful to do so. Some degree of plausibility can be assigned to the plea raised on behalf of the assessee. We also note that the assessee being deceased, it may not be possible on behalf of the assessee to prove the circumstantial facts to the hilt in this independent proceeding. Thus, a soft instance deserves in the present case.

6. In the light of the mitigating circumstances, the first appellate order is set aside and the AO is directed to reverse and delete the penalty imposed in question.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 21/03/2024

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /03/2024

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**