

आयकर अपीलिय अधिकरण
दिल्ली पीठ "ई", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं . 2579 & 2580/दिल्ली/2023 (नि. व. 2016-17 & 2017-18)
ITA Nos.2579 & 2580/DEL/2023 (A.Ys. 2016-17 & 2017-18)

Mohit Garg,
G-2, 3rd Floor, Preet Vihar,
New Delhi 110092
PAN: AYEPG-4314-M

..... अपीलार्थी/ Appellant

बनाम Vs.

Deputy Commissioner of Income-Tax,
Central Circle-16, New Delhi 110055

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Salil Kapoor, Advocate
प्रतिवादीद्वारा/ Respondent by : Shri S.L. Verma Sr. DR
सुनवाई की तिथि/ Date of hearing : 19/06/2024
घोषणा की तिथि/ Date of pronouncement : 19/06/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-28, Delhi [in short 'the CIT(A)'], for Assessment Year 2016-17 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and for AY 2017-18 upholding levy of penalty u/s. 271AAB of the Act in an ex-parte proceedings. Both the impugned orders are of even date i.e. 18.07.2023.

2. Shri Salil Kapoor, appearing on behalf of the assessee submitted that the assessee could not appear before the Assessing Officer and the CIT(A) on account of medical exigency. The assessee is suffering from blood cancer and was under treatment when penalty proceedings were initiated against the assessee. The Id. Counsel pointed that the assessee has furnished an affidavit citing reasons for non appearance before the Lower Authorities. The said affidavit is accompanied by medical records of the assessee. He further, stated that the assessee has *prima facie* good case in his favour on merits, if these appeals are restored to the file of Assessing Officer, the assessee would make submissions on merits before the AO.

3. Per contra, Shri S.L. Verma representing the Department vehemently defending the impugned orders stated that quantum appeals of the assessee have been decided by the Tribunal upholding the additions, therefore, no useful purpose would be served for restoring these penalty appeals to the AO. Thus, he prayed for dismissing both the appeals of the assessee.

4. We have heard the submissions made by rival sides, these two appeals are against ex-parte orders passed by the First Appellate Authority confirming levy of penalty u/s. 271 (1)(c) of the Act in AY 2016-17 and u/s. 271 AAB of the Act in AY 2017-18, respectively. The Id. Counsel for the assessee pointed that the assessee is a cancer patient and hence, could neither defend his case before the Assessing Officer nor before the CIT(A). The assessee has filed an affidavit alongwith medical treatment records to substantiate that assessee was undergoing treatment for blood cancer. The Id. DR has asserted that the Tribunal has upheld quantum additions arising out of assessment proceedings in the respective

assessment years, therefore, penalty should be upheld. It is a well settled law that assessment proceedings and penalty proceedings are distinct and independent. [Re. CIT vs. Khoday Eswarsa & Sons, 83 ITR 369 (SC) and CIT vs. Aretic Investment (P.) Ltd., 190 Taxman 157 (Delhi)]. Hence, penalty proceedings have to be adjudicated separately. Merely, for the reason that quantum addition has been upheld would not mean that levy of penalty u/s. 271(1)(c) of the Act is automatic. Taking into consideration entire facts of the case, without commenting on merits, we deem it appropriate to restore these appeals back to the file of AO for fresh adjudication after affording reasonable opportunity of hearing/ make submissions to the assessee, in accordance with law. The assessee is directed to make submissions before the AO on service of notice. If, the assessee fails to respond to the notice served by the AO, the Assessing Officer shall be at liberty to proceed ex-parte and conclude penalty proceeding, in accordance with law.

5. In the result, both appeals are allowed for statistical purpose, in the terms aforesaid.

Order pronounced in the open court on Wednesday the 19th day of June, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 19/06/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI