

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 256/DEL/2024  
Assessment Year: 2013-14

<b>Ms. Reena Goel,</b> E-270, Shastri Nagar, New Delhi-110052.	Vs	ACIT, Central Circle-28, New Delhi.
<b>PAN- AIAPG 0202 C</b>		
APPELLANT		RESPONDENT
Assessee represented by	Shri Nirbhay Mehta, CA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	04.06.2024	
Date of pronouncement	04.06.2024	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the Commissioner of Income-tax (Appeals)-29, New Delhi, dated 29.11.2023, pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

- "1. That on the facts and circumstances of the case and in law the penalty order passed by CIT (A)-29 New Delhi, is contrary to facts and bad in law.*
- 2. That the CIT (A) was not justified on facts and circumstances of the case in confirming the penalty of Rs 1,82,494/- u/s 271 (1) (c) of the Income Tax Act 1961 (hereafter referred as "the Act")*

*3 3. That the CIT (A) was not justified on facts and circumstances of the case in confirming the penalty u/s 271 (1) (c) of the Act, without specifying whether the show cause was for furnishing of inaccurate particulars of income or with regard to concealment of income.*

*4 4. That the appellant craves leave to add, alter and modify any of the grounds during the course of appellate proceedings.”*

2. Facts, in brief, are that for A.Y. 2013-14 the assessee filed her return of income on 26.03.2014 declaring income of Rs. 14,58,480/-. The assessment was completed u/s 153A of the Income-tax Act, 1961 (the “Act”) assessing assessee’s income at Rs. 56,15,600/- by making various additions. In quantum appeal the learned CIT(A) confirmed following additions:

(i)	Unaccounted jewellery (protective basis) [case is pending before ITSC and has not reached finality]	Rs. 9,81,006/-
(ii)	Unaccounted interest on investment as per seized document	Rs. 3,31,902/-
(iii)	Rental income on estimate basis	Rs. 67,872/-
(iv)	LTCCG	Rs. 2,86,242/-

2.1 The AO also initiated penalty proceedings u/s 271(1)(c) of the Act. Vide penalty order dated 27.03.2019 the AO concluded that assessee had concealed particulars of income amounting to Rs. 6,86,016/- on account of unaccounted interest on investment as per seized document; rental income on estimate basis; and LTCCG. He levied penalty of Rs. 1,82,494/- i.e. 100% of tax sought to be evaded on concealed income. Aggrieved against it the assessee

appealed to the learned CIT(A), who also affirmed the action of the AO. Aggrieved against it, now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal learned counsel for the assessee vehemently argued that the learned CIT(A) without adverting to material available on records proceeded to sustain penalty levied by the AO and passed the impugned order, ex parte, to the assessee. Learned counsel submitted that learned CIT(A) failed to appreciate the fact that impugned penalty cannot be sustained under the facts of the present case.

4. On the other hand learned DR opposed the submissions and supported the orders of authorities below. He contended that sufficient opportunity was afforded. The assessee grossly failed to avail opportunity and could not rebut the finding of AO. Hence, learned CIT(A) was justified in affirming the penalty order.

5. I have heard rival submissions and perused the material available on record. The AO levied penalty on following additions sustained by the learned CIT(A) in quantum appeal:

(i) Rental income on estimate basis	Rs. 67,872/-
(ii) Unaccounted interest on investment	Rs. 3,31,902/-
(iii) Addition on long term capital gains	Rs. 2,86,242/-

5.1 It is noticed that reason for levy of penalty by AO is stated to be furnishing of inaccurate particulars but the penalty is levied for concealment. It goes to prove

that the Assessing Authority misdirected itself. Such approach cannot be affirmed. The learned CIT(A) ought to have taken note of it. The Learned CIT(A) has sustained the impugned penalty by observing as under:

*“6. Ground No. 2: The brief facts of this case are that a search and seizure operation u/s 132 was conducted on SRM group of cases on 15.10.2013. Assessment proceedings u/s 153A were completed vide order dated 20.05.2016 at an income of Rs. 56,15,600/- as against the return income of Rs. 14,58,480/ and penalty proceedings u/s 271(1)(c) were also initiated. Subsequently, penalty u/s 271(1)(c) of the Act, was imposed at Rs. 1,82,494/- , vide order dated 27.03.2019. The present appeal has been filed against the said penalty order.*

*6.1 Out of the additions made by the AO vide order u/s 153A the addition on account of rental income for properties on estimate basis at Rs. 67,872/- , the addition on account of unaccounted interest on investment at Rs. 3,31,902/- and the addition on account of LTCG at Rs. 2,86,242 were sustained in first appeal before the CIT(A). Accordingly, it was held by AO that the appellant had concealed the particulars of income to the extent of Rs. 6,86,016/-being the aggregate of above three additions and penalty u/s 271(1)(c) was imposed thereon.*

*6.2 During the present appellate proceedings, inspite of numerous opportunities as mentioned in the pre paras no reply has been filed by the appellant to justify that the penalty imposed by the AO on these additions was not correct In view of the same, I do not find any reason to interfere with the penalty order imposed by the AO. Accordingly, the penalty imposed by the AO u/s 271(1)(c) is hereby confirmed. Accordingly, this ground of appeal is dismissed.”*

5.2 From the above it is clear that the aforementioned error escaped attention of the learned CIT(A) and did not advert to such important aspect of the case. I,

therefore, direct the AO to delete the impugned penalty. The grounds raised in the appeal are allowed.

6. Appeal of the assessee is allowed.

Order pronounced in open court on 04.06.2024.

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

\*MP\*

Copy forwarded to:  
Appellant  
Respondent  
CIT  
CIT(Appeals)  
DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI