

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.121/Lkw/2023
Assessment Year: 2016-17

Shri Ajay Kumar Nirwan, M-986-A, Aashiyana, L.D.A. Colony, Kanpur Road, Lucknow. PAN:ABYPN7360D (Appellant)	Vs.	Income Tax Officer, Ward-2(1)(1), Kanpur. (Respondent)
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Appellant by	Shri Ashwani Kumar, C.A.
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) Appeal vide I.T.A. No.121/Lkw/2023 has been filed by the assessee for assessment year 2016-17 against impugned appellate order dated 24/03/2023 (DIN & Order No.ITBA/NFAC/S/250/2022-23/1051242334(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) In this case assessment order dated 04/09/2018 was passed u/s 143(3) of the Income Tax Act, 1961 ("IT Act" for short) wherein the assessee's total income was assessed at Rs.15,14,665/- as against returned

income of Rs.9,72,730/-. Penalty proceedings u/s 271(1)(c) of the IT Act were also initiated. Vide order dated 19/03/2019, penalty amounting to Rs.1,49,010/- was imposed by the Assessing Officer u/s 271(1)(c) of the Act. The assessee filed appeal in the office of the learned CIT(A) against imposition of aforesaid penalty amounting to Rs.1,49,010/-. Vide impugned appellate order dated 24/03/2023, the learned CIT(A) dismissed the assessee's appeal. Present appeal before us has been filed by the assessee against the aforesaid impugned appellate order dated 24/03/2023 vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1051242334(1) of learned CIT(A). Grounds of appeal are as under:

- "1. That no notice as alleged by learned Lower Court were served or received by the appellant hence dismissing the appeal for alleged no response is bad in law.*
- 2. That when Learned AO did not recorded satisfaction while initiating penalty proceedings. The penalty imposed is bad in law.*
- 3. That imposing penalty without affording proper and reasonable opportunity is bad in law.*
- 4. That when the appellant had filed return on the basis of advice of the counsel penalty imposed for concealment is bad in law.*
- 5. That the order passed is against the merit, circumstances and legal aspects of the case."*

(C) On perusal of the aforesaid order dated 19/03/2019, it is found that the Assessing Officer issued the notice dated 08/02/2019 to the assessee. No further opportunity of hearing for making compliance was provided by the Assessing Officer to the assessee. Further the order imposing penalty

has been passed in a summary manner, stating *"I find it a fit case for imposing penalty under the provisions of section 271(1)(c) of the Income Tax Act, 1961 as it is an act of concealment of the particulars of his income and furnishing of inaccurate particulars of income."* The Assessing Officer has not passed a speaking order explaining how he came to the conclusion that this case was a fit case for imposition of penalty under the provisions of section 271(1)(c) of the IT Act. Moreover, the order of learned CIT(A) has also been passed ex-parte qua the assessee. The learned CIT(A) has also not passed a speaking order explaining how this case is a fit case for imposition of penalty u/s 271(1)(c) of the IT Act. He merely made reference to the assessment order passed by the Assessing Officer.

(D) At the time of hearing before us, in view of the aforementioned facts and circumstances, the learned Authorized Representative for the assessee submitted that the matter regarding imposition of penalty u/s 271(1)(c) of the Act should be restored to the file of the Assessing Officer with the direction to pass fresh order in accordance with law after providing reasonable and effective opportunity to the assessee. Learned Sr. Departmental Representative for Revenue relied on the orders passed by the Assessing Officer and the learned CIT(A).

(E) In view of the facts and circumstances of the present case before us, as elucidated in foregoing paragraphs (C) and (D), we are of the view that the assessee did not get reasonable opportunity to present his case before the Assessing Officer and the learned CIT(A). Further, we are of the view that the Assessing Officer as well as the learned CIT(A) failed to pass speaking order explaining how they found this to be a fit case for imposition

of penalty u/s 271(1)(c) of the IT Act. In view of the foregoing, we hereby set aside the impugned appellate order dated 24/03/2023 of the learned CIT(A) and we restore the dispute regarding imposition of penalty u/s 271(1)(c) of the Act to the file of the Assessing Officer with the direction to provide reasonable and effective opportunity to the assessee and to pass de novo order, if deemed fit under the facts and circumstances of the case and applicable law. All the grounds of appeal are treated as disposed of in accordance with the foregoing directions.

(F) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 25/06/2024)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:25/06/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT

4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar