

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : E : NEW DELHI  
BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.68/Del/2024  
Assessment Year: 2009-10

Moushumi Mishra Gahlot,  
A-400, LGF, Defence Colony,  
New Delhi – 110 024.

Vs DCIT,  
Central Circle-4,  
New Delhi.

PAN: AGLPG5571D

(Appellant)

(Respondent)

Assessee by : Shri Vinod Kumar Bindal, CA &  
Shri Saurabh Sharma, Advocate

Revenue by : Shri Anushul, Sr. DR

Date of Hearing : 29.04.2024

Date of Pronouncement : .07.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 21.12.2023 of the Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. CIT(A), Delhi-23/10024/2008-09 arising out of the appeal before it against the order dated 27.07.2023 passed u/s 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the DCIT, Central Circle-04, New Delhi (hereinafter referred to as the Ld. AO).

2. The assessee's return of income u/s 139 was filed on 31.07.2009 and, thereafter, a search action was conducted in case of a group of Gehlot & Company on 10.10.2018 wherein on the basis of seized documents, data in case of M/s CIFSL group of cases which was part of the search, certain documents and information were found allegedly pertaining to the assessee and, on the basis of which satisfaction was recorded and the cases were centralized by order u/s 127 of the Act. Thereafter, notice u/s 153C r.w.s. 153A of the Act was issued on the assessee on 07.07.2021, but, no return was filed and AO examined the return of the assessee as filed u/s 139 of the Act and, on the basis of the alleged incriminating documents and evidence pertaining to the assessee, made addition on account of bogus unsecured loans and also commission u/s 69C of the Act. However, the assessee had failed to respond to the notice u/s 142(1) of the Act issued to the assessee on 07.11.2022 fixing the date of hearing to be on 14.11.2022. As no response was received from the assessee nor any adjournment was sought, notice u/s 271(1)(b) of the Act dated 17.01.2023 was issued to the assessee in response to which also no submission was filed by the assessee and, therefore, the penalty of Rs.10,000/- was imposed by the AO u/s 271(1)(b) of the Act which was challenged before the CIT(A) wherein, apart from questioning the imposition of penalty on the basis that the notice was duly responded, it was also alleged that jurisdiction of assessment u/s 153C of the Act was illegally exercised. However, CIT(A) had dismissed the appeal for which the assessee is in appeal raising the following grounds:-

*“1. The CIT(A) erred in law and on facts in confirming the penalty u/s 271(l)(b) of the Act by ignoring the categorical submissions of the assessee placed on record vide letter dated 01/12/2023 that there was no failure of the assessee to submit reply though the impugned proceedings were completely illegal and void ab initio. Thus, the same should be quashed.*

*2. The impugned penalty order is otherwise also void ab initio and illegal because the impugned compliance desired by itself was in an illegal reassessment proceedings initiated u/s 153C of the Act, without jurisdiction and mandatory requirements as has been held in DCIT vs U K Paints (Overseas) Ltd 2023-TIOL-58-SC-IT as no incriminating material for this assessment year was found in an income-tax search conducted on some other assessee. Thus, the entire proceedings were illegal and could result into any legal penalty, needs to be quashed.*

*3 The impugned order is an example of not only blatant misuse of the process of law and adjudicating power by the AO but also unambiguously demonstrates lack of knowledge of the AO of the legal provisions of the law entrusted on him by the Legislature to be exercised judicially and not at all to harm the subject of the State recklessly.*

*4 The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”*

3. On hearing ld. counsel for the assessee, it comes up that the judgement of the Hon’ble Delhi High Court in case of ***Pr. CIT vs. Ojjus Medicare Pvt. Ltd. & Ors., ITA No.52/2024 & Ors., dated 03.04.2024*** has been relied to submit that the assessment itself was beyond the period of six years so there was irregular exercise of jurisdiction.

4. Ld. DR has not rebutted this but contested the issue on merits submitting even if exercise of jurisdiction is irregular the assessee is supposed to reply to the notice u/s 142(1) of the Act.

5. Giving thoughtful consideration to the matter on record and the issue we find that against the notice u/s 153C read with 153A of the Act dated 7.7.21

assessee had filed a responses dated 20.7.21 and 6.9.22 raising objection about assumption of jurisdiction which were disposed of on 17.11.22. Thereafter notice was again issued u/s 142(1) of the Act on 2.2.23 which was responded by reply dated 6.2.23 and raising objection to reopening copy of reasons was sought. These objections were decided on 9.2.23 and thereafter again notice u/s 142(1) was issued on 15.2.23 which was responded. Thus for non-compliance of the notice dated 7.11.22 imposition of penalty seems unjustified. Assessee had challenged the assumption of jurisdiction on 20.7.21 and 6.9.22 itself and till the disposal of objection on 17.11.22, if any, assessee had valid reasons to not respond on merits. Specially now when assessee has a valid ground to say that assumption of jurisdiction was vitiated.

6. Thus we sustain the grounds and allowing the appeal of assessee the penalty order is quashed.

Order pronounced in the open court on 26.07.2024.

Sd/-

(G.S. PANNU)  
VICE PRESIDENT

Dated: 26<sup>th</sup> July, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi