

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 3633/DEL/2023
Assessment Year: 2012-13

Pushpa Dhar, C-103, Wembley Wstate, Sector-50, Gurgaon-122018	<u>Vs</u>	Income-tax Officer, Ward-2(1), Faridabad
PAN- ASTPD 8702 F		
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Om Parkash, Sr. DR	
Date of hearing	01.08.2024	
Date of pronouncement	01.08.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 16.10.2023, pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

“1. That levy of Penalty u/s 271(1) (c) by A.O. and confirmed by CIT (A) is bad in law and against the facts and circumstance of the case.

2. *That levy of penalty u/s 271(1) (c) by A.O. and confirmed by CIT (A) is contrary to facts and law and based upon recording of incorrect facts and finding.*
3. *That the A.O. levied the penalty u/s 271(1) (c) ignoring the facts that the Assessee has opted "VIVAD SE VISHWAS SCHEME".*
4. *That levy of penalty is against the principle of natural justice.*
5. *That issuance of form 5 is the responsibility of the Income tax Authority and for non- issuance of the same, assessee cannot be penalised.*
6. *That the assessee paid the whole tax amount the assessee cannot be penalised for non-issuance of form 5 by the Income Tax Authority.*
7. *That the assessee cannot be penalised if the Income Tax authority has not given the credit of T.D.S and as a result not issuance of form 5.*
8. *That the appellant craves leave to add/alter any of the growth of appeal before or at the time of hearing."*

2. Facts, in brief, are that in A.Y. 2012-13, on the basis of additions made in the assessment order on account of undisclosed investment of Rs.7,56,632/-; and undisclosed commission income of Rs. 16,66,666/-, the AO initiated penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 and vide penalty order dated 14.03.2023 imposed a penalty of Rs. 5,89,150/-, being 100% of tax sought to be evaded, u/s 271(1)(c) of the Act. Aggrieved against it the assessee preferred appeal before learned CIT(A), who dismissed the appeal by affirming the penalty order. Aggrieved against it the assessee is in appeal before this Tribunal.

3. At the hearing no one appeared on behalf of the assessee despite issue of notice for hearing. I have heard learned DR and perused the material available on record. In penalty proceedings the stand of the assessee before the AO was that for A.Y. 2012-13 the assessee had opted VIVAD SE VISHWAS SCHEME and had

filed Form-4, issued under the said scheme. The AO, however, observing that assessee was not granted Form-5, levied the impugned penalty. In appeal, the learned First Appellate Authority affirmed the penalty order, inter alia, observing as under:

“The above grounds of appeal of the appellant vis-à-vis assessment order is carefully considered. Considering the entire conspectus of the case I find no infirmity in the order of the AO in as much as the same is done, in absence of appellant's compliance, as per law after proper verification of tax payment details in the VsVs. Accordingly impugned penalty amount of Rs. 5.89,150/-for undisclosed Investment and Undisclosed Commission by the appellant stand confirmed.”

3.1 Considering the totality of facts of the present case, in order to sub serve the interests of natural justice and to verify the claim of the assessee, I hereby set aside the order of learned CIT(A) and restore the matter to the file of learned First Appellate Authority for fresh decision, after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

4. Appeal is allowed for statistical purpose.

Order pronounced in open court on 01.08.2024.

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

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

