

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A Nos.2570 & 2571/Del/2023

निर्धारणवर्ष/Assessment Year: 2013-14

MOHIT GARG G-2, 3 rd Floor, Preet Vihar, New Delhi. PAN No.AYEPG4314M	<u>बनाम</u> Vs.	DCIT Circle-16, NCC DIT(S), Jhandewalan Extn., New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Sanat Kapoor, Adv. & Shri Utkarsh, Adv.
राजस्वकीओरसे /Revenue by	Shri Om Parkash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	03.07.2024
उद्घोषणाकीतारीख/ Pronouncement on	29.08.2024

आदेश /O R D E R

These two appeals are filed by the assessee against different orders of the Ld.CIT(A)-28 in sustaining the penalty levied u/s 271A and 271(1)(c) of the Act for the AY 2013-14.

2. At the outset, the Ld. Counsel for the assessee submits that the assessee was suffering from Blood Cancer and he was preoccupied with his medical treatment. The medical proof along with the affidavit of the assessee was submitted. Hence, as a result he could not pursue his matter before the CIT(A). The Hon'ble ITAT

vide order dated 19.6.2024 for AY 2016-17 and AY 2017- 18 has already remanded the matter back to the AO which was also decided *ex-parte*. The Hon'ble ITAT has noted in its order that the assessee was suffering from blood cancer. The impugned CIT(A) orders in the present appeal for AY 2013-14 is identical to the CIT(A) order of AY 16-17 and AY 17-18. These are passed on the same day by the CIT(A). It is submitted that the quantum appeals of the assessee are pending before the Hon'ble ITAT Delhi. However, we submit that this should not have an impact on the penalty matters since the CIT(A) order in penalty proceedings, against which the two present appeals are filed, are *ex parte* orders. The assessee could not participate in proceedings before the CIT(A) as he was suffering from blood cancer and was pre occupied with his medical treatment.

3. Ld. DR has no serious objection.

4. Heard rival submissions, perused the orders of the authorities below. It is observed that when the appeals for the assessment years 2016-17 and 2017-18 came up for hearing before this Tribunal in ITA No.2579 & 2580/Del/2023 the Tribunal by order dated 19.06.2024 restored the appeals to the file of the AO for fresh

adjudication after affording reasonable opportunity of hearing to the assessee in accordance with law observing as under:

“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 Ld. Counsel pointed that the assessee has furnished an affidavit citing reasons for no- 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 (l)(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 Eswards & 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. Following the order of the Tribunal these two appeals are also restored to the file of the AO for fresh adjudication after providing reasonable opportunity of hearing to the assessee in accordance with law.

6. In the result, both the appeals are allowed for statistical purpose.

Order pronounced in the open court on 29/08/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 29.08.2024

*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi