

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C': NEW DELHI  
BEFORE  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER  
ITA No. 9735/Del/2019 (A.Y.2015-16)**

Kamlesh Kumar Rathi 6, Sadhna Enclave, Malviya Nagar, New Delhi <b>PAN No: AFFPR5799K</b>	Vs	ACIT Central Circle-16 Room No. 344, 3 <sup>rd</sup> Floor, E-2, ARA Centre, Jhandewalan Extension, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Dr. Rakesh Gupta, Adv & Sh. Somil Agarwal, Adv
Respondent by	Shri Dayainder Singh Sidhu CIT(DR)

Date of Hearing	23/10/2024
Date of Pronouncement	05/11/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-XXVI, New Delhi ["Ld. CIT(A)" for short], dated 16/10/2019 for the Assessment Year 2015-16.

2. The grounds of Appeal are as under: -

*"1. That the Ld. CIT(A) grossly erred in law and facts of the case while upholding penalty of Rs.64,20,000/- levied by Ld. Assessing Officer(AO) u/s 271AAB of the Act.*

*2. That the notice issued by AO for initiating penalty u/s 271AAB of the Act is not in accordance with law vis-à-vis not specifically*

*pointing out the default for which the Ld. AO sought to impose penalty u/s 271AAB of the Act.*

*3. That the Ld. CIT(A) erred in law and facts of the case while upholding penalty of Rs.64,20,000/- levied by AO u/s 271AAB of the Act without appreciating that no satisfaction was recorded for issuing notice u/s 271AAB of the Act.*

*4. That the Ld. CIT(A) grossly erred in law and facts of the case while upholding penalty of Rs. 64,20,000/- even when Ld. AO failed to explain how addition made would fall under the meaning of "undisclosed income" as defined in Explanation (c) of Section 271AAB of the Act.*

*5. That the Ld. CIT(A) grossly erred in law and facts of the case while upholding penalty of Rs. 64,20,000/- without appreciating that the alleged additions made by Ld. AO itself is untenable.*

*6. That the Ld. CIT(A) grossly erred in law and facts of the case while upholding penalty of Rs.64,20,000/- without appreciating that the penalty proceedings are independent of assessment proceedings and penalty u/s 271AAB is neither automatic nor mandatory in nature.*

*7. That the Ld. CIT(A) grossly erred in law and facts of the case while upholding penalty u/s 271AAB of the Act of Rs.64,20,000/- without appreciating that penalty was imposed @60% which is on the higher side being unreasonable and unjustified.*

*8. That the Ld. CIT(A) grossly erred in law and facts of the case while upholding penalty of Rs.64,20,000/- without disposing each ground raised before him separately which are independent and without prejudice to each other.*

*9. That each grounds mentioned hereinabove are independent and without prejudice to each other.*

*10. That the Appellant craves leave to alter, amend, modify, delete, vary and/or add any grounds of appeal at any time hereinafter."*

3. Brief facts of the case are that, an assessment order came to be passed on 31/12/2016 by making one of the additions of Rs. 5,37,00,000/- on account of unexplained investment and a satisfaction for initiation of penalty proceedings u/s 271 AAB of the Income Tax Act, 1961 ('Act' for short) has been recorded and penalty proceedings also been initiated. As against the said assessment order, the Assessee preferred an Appeal before the CIT(A) and in the quantum appeal, the Ld. CIT(A) restricted the addition to Rs. 1,07,00,000/- out of R. 5,37,00,000/- being excess consideration paid in cash vide order dated 28/11/2017. The said order of the Ld. CIT(A) dated 28/11/2017 has been challenged by the Assessee in ITA No. 533/Del/2018 before the Tribunal. The Co-ordinate Bench of the Tribunal vide order dated 30/07/2024, remand the matter to the file of the A.O. for verification of factual aspect of the matter and to decide the issue afresh in accordance with law.

4. The Ld. Counsel by placing a copy of the order dated 30/07/2024 in ITA No. 553/Del/2018 before us, submitted that since the addition made in the quantum proceedings has been restored to the A.O. for fresh adjudication, the penalty proceedings initiated in consequence to the said addition will not survive, therefore, sought for allowing the appeal.

5. Per contra, the Department's Representative relying on the orders of the Ld. CIT(A) and sought for dismissal of the Appeal.

6. Heard. Considering the fact that the Co-ordinate Bench of the Tribunal in ITA No. 553/Del/2018 has remanded the matter to the A.O. regarding confirmation of addition of Rs. 1,07,00,000/- on account of income from undisclosed sources in respect of purchase of property, the penalty proceedings initiated pursuant to the order of the CIT(A) in sustaining the said addition will not survive. Accordingly, we set aside the order of penalty as well as order of the CIT(A) with a liberty to the A.O. to initiate afresh penalty proceedings in accordance with law after passing the assessment order pursuant to the order of the Tribunal in ITA No. 553/Del/2018 in accordance with law.

7. In the result, the Appeal of the Assessee is allowed.

Order pronounced in open Court on 05th November, 2024

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 05/11/2024

*R.N, Sr. PS*

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT, NEW DELHI