

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' : NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.5389/Del/2017
Assessment Year : 2012-13**

**Ms. Jyoti Subba,
(Legal Heir of Late Shri Mon
Kumar Subba),
Subba Farm House,
118, Village Sultanpur,
Mehrauli Gurgaon Road,
Delhi – 110 030.
PAN : AASPS1484J.
(Appellant)**

**Vs. ACIT, Central Circle-4,
New Delhi.**

(Respondent)

**ITA No.1967/Del/2019
Assessment Year : 2012-13**

**Ms. Jyoti Subba,
(Legal Heir of Late Shri Mon
Kumar Subba),
Subba Farm House,
118, Village Sultanpur,
Mehrauli Gurgaon Road,
Delhi – 110 030.
PAN : AASPS1484J.
(Appellant)**

**Vs. ACIT, Central Circle-08,
New Delhi.**

(Respondent)

**ITA No.1968/Del/2019
Assessment Year : 2012-13**

**Ms. Jyoti Subba,
(Legal Heir of Late Shri Mon
Kumar Subba),
Subba Farm House,
118, Village Sultanpur,
Mehrauli Gurgaon Road,
Delhi – 110 030.
PAN : AASPS1484J.
(Appellant)**

**Vs. Additional CIT,
Central Range-2,
New Delhi.**

(Respondent)

ITA No.1969/Del/2019
Assessment Year : 2012-13

Ms. Jyoti Subba,
(Legal Heir of Late Shri Mon
Kumar Subba),
Subba Farm House,
118, Village Sultanpur,
Mehrauli Gurgaon Road,
Delhi – 110 030.
PAN : AASPS1484J.
 (Appellant)

Vs. Additional CIT,
Central Range-2,
New Delhi.

(Respondent)

Appellant by : Shri R.S. Singhvi, CA and
 Shri Satyajeet Goel, Advocate.
 Respondent by : Shri Krishna K. Ramawat, Senior DR.

Date of hearing : 20.11.2024
 Date of pronouncement : 27.11.2024

ORDER

PER MAHAVIR SINGH, VP

These four appeals by the assessee arise out of separate orders of learned Commissioner of Income-tax (Appeals)-24, New Delhi dated 30th June, 2017 and 17th January, 2019 for the assessment year 2012-13.

ITA No.5389/Del/2017 (AY 2012-13)

2. At the outset, learned counsel for the assessee drew our attention to the grounds raised i.e., ground No.1 & 2 and relevant sub-grounds. The grounds raised are regarding assumption of jurisdiction under Section 153A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') and on merits, the addition confirmed of ₹1.70 crores on account of unexplained repayment of cash loan. The grounds are argumentative and exhaustive and hence, need not be reproduced. At the outset, learned Counsel stated that as regards the jurisdiction issue, he is not pressing the same and hence, the same is dismissed.

3. The issue argued by the learned counsel for the assessee on merits is as regards to the addition of ₹1.70 crores in respect of unexplained repayment of cash loan.

4. Brief facts are that the relevant assessment year involved in this appeal is 2012-13 relevant to financial year 2011-12. The assessee filed its return of income originally on 29th March, 2013 and assessee's case was selected for scrutiny assessment and assessment was framed under Section 143(3) of the Act. Subsequently, a search was conducted by the Investigation Wing of the Department under Section 132 of the Act on 29th April, 2014. Consequent to search and seizure operation conducted under Section 132 of the Act on Karan Luthra group of cases on 14th March, 2014, the search on assessee was conducted from where some incriminating documents and information related to Shri M.K. Subba were found and seized. Consequently, centralization of assessee's case was done and accordingly, notice dated 1st September, 2015 under Section 153A of the Act was issued to the assessee. In response to the said notice, the assessee filed its return of income under Section 153A declaring total income of ₹16,65,580/-, which was as declared in the original return filed under Section 139 of the Act. The facts relevant to the issue are noted by the Assessing Officer that during search, a document containing statement of account of Karan Luthra as on 31st March, 2012 was found from where it is noted that the assessee has received amounts and deposited in bank account and, in the statement of account of Karan Luthra, there are certain other transactions of sale and purchase of properties. The relevant document is reproduced in the assessment order at page 14. The concerning issue is that the repayment of cash loan of ₹1.70 crores is unexplained. The Assessing Officer noted the figures of ₹1.70 crores from this statement of account of Karan Luthra

as on 31st March, 2012 and added the sum of ₹1.70 crores by observing as under:-

“Therefore, it is conclusively held that the assessee has intentionally not recorded, the loan transactions done in cash. Accordingly, the source of the, repayment of the loan of Rs.1.7 Crore, in cash, could not be explained by the assessee. Therefore the same is added as the undisclosed income of the assessee in the relevant assessment year. It is further noted that Rs.55 lac noted in the document reflects loan received in cash by the assessee, for which he would be liable for penalty u/s 269SS.”

5. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also confirmed the action of the Assessing Officer. Aggrieved, the assessee is now in appeal before the Tribunal.

6. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, learned counsel for the assessee made preliminary submission that as per the document reproduced by the Assessing Officer at page 14, the statement of account of Karan Luthra as on 31st March, 2012, wherein certain property transactions and payments and repayment are noted and particular transaction relating to the assessee is noted as under :-

“Paid		
19/12/2012	85.00	
20/12/2012	35.00	
26/12/2012	50.00	170.00”

7. Learned Counsel stated that these transactions as noted pertain to assessment year 2013-14 relevant to financial year 2012-13 and not the year under consideration i.e., assessment year 2012-13 relevant to financial year 2011-12.

8. When these facts were confronted to learned CIT-DR, she fairly agreed and could not controvert the stated facts that these

transactions relate to assessment year 2013-14 and not assessment year 2012-13. We noted that these repayments are made on 19th December, 2012 amounting to ₹85 lakhs, 20th December, 2012 amounting to ₹35 lakhs and 26th December, 2012 amounting to ₹50 lakhs. Once the stated fact is that these payments are made in financial year 2012-13 relevant to assessment year 2013-14, the addition can be made only in that year and not in the relevant assessment year 2012-13. The question of year of assessability raised by the learned counsel for the assessee is very much relevant and we adjudicate this issue being going directly to the root of the matter. It is an admitted fact that the seized paper has to be read as a whole and cannot be interpreted differently. In the given facts and circumstances, actually the repayments are made in financial year 2012-13 relevant to assessment year 2013-14 and hence, in this relevant year, it cannot be assessed. Hence, this addition in assessment year 2012-13 is deleted. Apart from this, learned counsel for the assessee has not pressed any issue. Hence, this issue of assessee's appeal is allowed.

ITA No.1967/Del/2019 (AY 2012-13)

9. At the outset, learned counsel for the assessee stated that the penalty levied in this appeal by the Assessing Officer under Section 271(1)(c) is arising out of the above quantum appeal decided in ITA No.5389/Del/2017 for the assessment year 2012-13. Learned counsel for the assessee drew our attention to the relevant ground No.2 as under:-

“2. That on the facts and circumstances of the case, the CIT(A) has grossly erred in upholding penalty of Rs.52,53,000/- u/s 271(1)(c) of the Act in respect of hypothetical addition of Rs.1,70,00,000/- which is not sustainable under the provisions of the Act.”

10. He pointed out that this addition made in assessment year 2012-13 is arising out of the seized paper from Karan Luthra from where the addition of ₹1.70 crores was made. Exactly, on this quantum penalty of ₹52,53,000/- was levied by the Assessing Officer. Since we have deleted the quantum addition, this penalty will not survive because this is directly emanating from the addition of ₹1.70 crores. Since we have deleted the addition, the penalty imposed is also deleted. The appeal is allowed.

ITA No.1968/Del/2019 (AY 2012-13)

11. At the outset, learned counsel for the assessee stated that the penalty levied in this appeal by the Assessing Officer under Section 271E is arising out of the above quantum appeal decided in ITA No.5389/Del/2017 for the assessment year 2012-13. Learned counsel for the assessee drew our attention to the relevant ground No.1 as under:-

“1(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming penalty of Rs.1.70 crores u/s. 271E of the Income Tax Act, 1961 even though there is no case of any contravention of provisions of sec. 269T of the Act.”

12. He pointed out that this addition made in assessment year 2012-13 is arising out of the seized paper from Karan Luthra from where the addition of ₹1.70 crores was made. Exactly, on this quantum penalty of ₹1.70 crores was levied by the Assessing Officer. Since we have deleted the quantum addition, this penalty will not survive because this is directly emanating from the addition of ₹1.70 crores. Since we have deleted the addition, the penalty imposed is also deleted. The appeal is allowed.

ITA No.1969/Del/2019 (AY 2012-13)

13. The only issue in this appeal of the assessee is as regards the levy of penalty by the Assessing Officer and confirmed by the CIT(A) amounting to ₹55 lakhs under Section 271D for violation of provisions of Section 269SS of the Act. The assessee has raised various grounds which are argumentative and exhaustive. Hence, we are not reproducing the entire grounds except ground No.1, which reads as under:-

“1(i) That on the facts and circumstances of the case, the Id.CIT(A) was not justified in confirming the penalty of Rs.55 lakhs u/s. 271D of the Income Tax Act, 1961 even though there is no case of any contravention of provisions of sec. 269SS of the Act.”

14. We have heard the rival contentions and have gone through the facts and circumstances of the case. The facts are noted in the above decision rendered in ITA No.5389/Del/2017 for assessment year 2012-13. The brief facts are that during assessment proceedings, the Assessing Officer noted from the statement of account of Karan Luthra as on 31st March, 2012 that assessee has received cash from the seized document of ₹55 lakhs and relevant document is reproduced in the assessment order at page 14 and relevant noting of entries of cash received by the assessee as loan is as under:-

“Cash Recvd		
26/5/11	50.00	
01/10/11	5.00	
		55.00”

15. The Assessing Officer has not added this amount to initiate penalty proceedings under Section 271D and made reference to the Additional CIT, Central Range-2, New Delhi for levying penalty. The Additional CIT noted the facts that the search and seizure action under Section 132 of the Act was conducted on Karan Luthra group of cases on 14th March, 2014 and during the search operation, some

incriminating documents from the person Shri M.K. Subba was found and seized. Consequent to search and seizure action on Shri Karan Luthra group of cases, assessee was also covered under Section 132 of the Act on 29th April, 2014. During the course of assessment proceedings, the Assessing Officer noted that the assessee has taken cash loan of ₹55 lakhs from Karan Luthra in view of documents seized and which is part of assessment order page 14. Accordingly, the Additional CIT started penalty proceedings under Section 271D of the Act and show cause notice dated 5th September, 2017 was issued. The assessee complied and replied to show cause notice filed vide letter dated 6th February, 2018. The assessee, vide reply at para 4(c) of the penalty order levied by the Additional CIT under Section 271D of the Act admitted these papers but he stated that these payments are for the purpose of agreement to sell. The relevant paragraph of reply which is reproduced in paragraph 4(c) of the penalty order, reads as under:-

“c) That the above documents of payment made by Sh. Karan Luthra pertain to ‘Agreement to Sell’ of Subba Farm House which have never been acted upon as these papers were taken by Sh. Karan Luthra as security papers to use in case his loan is not repaid by Sh. M.K. Subba. Moreover, some of these papers have been made and forged by Sh. Karan Luthra when he came to know about Sh. Subba’s serious illness in order to grab the property of worth more than 60 crores.”

16. Accordingly, the Additional CIT, after going through the seized document noted that these are cash payments of ₹55 lakhs and as to why the penalty should not be levied. He noted the assessee’s reply that the amount of ₹50 lakhs paid by Karan Luthra in the seized document is on account of sale of farm house on land measuring 13 bighas and 5 biswas bearing Khasra Nos.179/2/1 (1-05), 179/2/2 (0-11), 180/2/1 (2-10), 181/2/1 (1-05), 180/2/2 (2-02), 181/2/2 (1-15), 182/1 (2-11), 183/1 (2-11), which is the document reproduced by the

Assessing Officer at page 21 of the assessment order. Learned Counsel stated that ₹50 lakhs cash received was on account of sale of property and sale of property transaction is not covered under Section 269SS of the Act. Hence, according to AO/Additional CIT, the transaction is a loan transaction and covered under Section 269SS of the Act.

17. In reply, learned CIT-DR stated that this cash of ₹50 lakhs is not received by the assessee on account of sale from property as claimed by him but the cash received is loan and she read out the reply submitted by the assessee on 6th February, 2018 wherein it is admitted that the transaction of sale purchase has never happened and it is not concluded. These are security papers to cover up this loan transaction. She stated that this is a loan transaction and not a transaction for the purpose of purchase or sale of property. In terms of the above, she stated that penalty of ₹55 lakhs be confirmed.

18. We, after noting the facts of the case, are of the view that there is a doubt as regards the claim of the assessee whether this transaction of ₹50 lakhs as noted by the Assessing Officer in the assessment order at page 21 being received for the sale of the above property, and the statement given by the assessee in his reply dated 6th February, 2018 are contradictory. This creates doubt in our mind and hence, the issue needs verification. Hence, we set aside this penalty and remand the matter back to the file of the Additional CIT, who will examine the details of property transactions relating to alleged sale of farm house on land measuring 13 bighas and 5 biswas bearing Khasra Nos.179/2/1 (1-05), 179/2/2 (0-11), 180/2/1 (2-10), 181/2/1 (1-05), 180/2/2 (2-02), 181/2/2 (1-15), 182/1 (2-11), 183/1 (2-11). The Additional CIT will find out whether the transaction has happened or not and whether this payment of ₹50 lakhs is relating to this transaction or not. In case this is a loan, the penalty will be levied

and in case it is for sale of property transaction, the penalty will not be levied. As regards the balance ₹5 lakhs also, there is no clarity whether these ₹5 lakhs is on account of property transaction or it is a loan. Hence, this also needs verification at the level of the AO/Additional CIT. In terms of the above, we direct the Additional CIT to reconsider the facts and then decide the case afresh in accordance with law. In the result, the appeal is allowed for statistical purposes.

19. In the result, the appeals of the assessee in ITA No.5389/Del/2017, 1967/Del/2019 and 1968/Del/2019 are allowed and appeal of the assessee in ITA No.1969/Del/2019 is allowed for statistical purposes.

Decision pronounced in the open Court on 27.11.2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

VK.

Copy forwarded to: -

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

Assistant Registrar