

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.3072/Del/2023
Assessment Year: 2015-16

M/s. Manish Merchants Pvt. Ltd., GI-48, GT Karnal Road Industrial Area, New Delhi	Vs.	DCIT, Central Circle-13, New Delhi
PAN: AAFCM1912R		
(Appellant)		(Respondent)

Assessee by	Sh. Shailesh Gupta, Adv.
Department by	Sh. Akhilesh Kumar Yadav, Sr. DR

Date of hearing	03.12.2024
Date of pronouncement	05.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2015-16, arises against the Commissioner of Income Tax (Appeals)-28 [in short, the "CIT(A)"], New Delhi's order dated 16.08.2023 passed in case no. 26/10585/2014-15 involving proceedings under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties at length. Case file perused.
3. It emerges during the course of hearing that the learned CIT(A)'s impugned *ex-parte* lower appellate findings have affirmed the Assessing Officer's action levying section 271(1)(c) penalty of Rs.1,02,20,170/- pertaining to quantum issue of bogus/excess claim of business loss(s) and disallowance of interest/finance cost involving varying sums.
4. Learned counsel submits that there was a communication gap at the assessee's office auditor's and arguing counsel's level which formed the sole reason of its non-appearance in the lower appellate proceedings.
5. The Revenue on the other hand invites our attention to the CIT(A)'s *ex-parte* detailed discussion in para 3, pages 2 to 3 indicating the CIT(A) to have afforded three effective opportunities to the taxpayer. Mr. Yadav's case accordingly is that the assessee has all along been non-cooperative in the lower appellate proceedings and therefore we ought to uphold the impugned penalty.
6. We have given our thoughtful consideration to the foregoing rival submissions and *prima facie* find merit in assessee's

submissions to the extent it explains the reasons of its non-appearance in the lower appellate proceedings as such communication gap at various levels could not be altogether ruled out. We therefore deem it appropriate in larger interest of justice to restore the assessee's instant sole substantive grievance back to the CIT(A) for its afresh adjudication as per law. This indeed will be a subject to the rider that the assessee shall plead and prove its case within three effective opportunities at its own risk and responsibility in consequential proceedings.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 5th December, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 5th December, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi