IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

ITAs No.6436 & 6437/Del/2016
Assessment Years 2011-12 & 2012-13

ACIT, Central Circle-14, New Delhi	Vs.	**Bikramjit Singh Kalra, A-29, Defence Colony, New Delhi.**
(Appellant)		(Respondent)

Revenue by :	Ms. Bedobani Chaudhuri, Sr.D.R.
Assessee(s) by :	S/Shri Ved Jain & Ashish Chadha, Adv.

सुनवाई की तारीख/**Date of Hearing : 25/04/2017**
घोषणा की तारीख /**Date of Pronouncement: 28/04/2017**

ORDER

These appeals of the assessee arises from two different order of learned CIT(A)-XXVI, New Delhi dated 28.10.2014 for the assessment years 2011-12 and 2012-13. The assessee has raised the following grounds of appeal in ITA No.6436/D/2016.

> *"1. The CIT (A) has erred on facts and in law in deleting the penalty of Rs.49,915/- on account of undisclosed foreign income levied u/s.271(1)(c) of the Act.*
>
> *2.The appeal is being filed inspite of low tax effect as the case is covered in exception (d) of Para 8 of CBDT Circular No.21/2015 dated 10.12.2015."*

2. The Assessee has raised the grounds of appeal in ITA No.6437/D/2016 as under:

> *"1. The CIT (A) has erred on facts and in law in deleting the penalty of Rs.788/- on account of undisclosed foreign income levied u/s.271(1)(c) of the Act.*
> *2.The appeal is being filed inspite of low tax effect as the case in exception (d) of Para 8 of CBDT Circular No.21/2015 dated 10.12.2015.*

3. First of all we take up the appeal of the assessee in ITA No.6436/Del/2016. The brief facts of the case are that the assessee had filed return of income in response to notice issued under Section 153-A at an income of Rs.27,46,560/- as against income returned in a return filed under Section 139(1) at Rs.25,84,820/-. The reasons for increase in income disclosed in a return filed under Section 153A was on account of non inclusion of $ 1.39 of interest from foreign bank and $ 891.99 on account of income from investment in foreign assets amounting to Rs.40,200 (converted at Rs.45). In addition an amount of Rs.1,21,539 had been shown as income from other sources which was on account of income from future and option transaction which was earlier set-off against loss in share transaction. The assessee on being confronted with proposed penalty submitted before the AO that the impugned items of income were omitted in the original return. The AO thereafter highlighted the reliance placed by the appellant on the judgement of ITAT, Delhi F bench in the case of Pawan Kumar Gupta vs ACIT CC6, New Delhi. The AO also placed reliance on the decision of Hon'ble ITAT, Chennai bench in the case of ACIT CC2(5) versus Shrimati J. Maithali. The AO thereafter highlighted the provisions of Section 153 A and the judgement of Hon'ble Delhi high court in the case of CIT vs Anil Kumar Bhatia according to which the absence of incriminating material found during the course of search did not affect the jurisdiction under the Section 153-A. The AO also highlighted the fact that the impugned commission on account of non disclosure of income came to light only because of proceeding conducted under Section 132 of the Income Tax Act 1961. This being so the claim of the appellant that the impugned disclosure was voluntary is not correct. The AO in view of these facts proceeded to impose penalty to the tune of Rs.49,915/-.

4. Learned CIT(A) in fact deleted the penalty for the reasons mentioned in his order.

5. I have heard the rival contentions and perused the facts of the case. At the outset, ld. counsel for the assessee, Mr. Ved Jain, Advocate invited my attention and heavily relied upon the decision of Hon'ble Delhi High Court in the case of PCIT vs. Neeraj Jindal in ITA No.463/D/2016 dated 09.02.2017 where the relevant facts and decision are reproduced hereinbelow:

> *"13. At the outset, it must be noted that pursuant to the search and seizure operation conducted under Section 132(4) of the Act, the assessee was given notice under Section 153A to file fresh return of his income. Thereafter, the assessee filed revised returns and the return filed by the assessee under Section 153A was accepted as such by the A.O. However, the A.O. was of the opinion that inasmuch that the income disclosed by the assessee under Section 153A was higher than the income in the original return filed under Section 139(1) and since in his view, such disclosure of income was a consequence of the search conducted on the assessee, there was concealment of income which attracted Section 271(1)(c) of the Act. Therefore, the question that needs to be answered is whether penalty is to be levied automatically whenever the assessee declares a higher income in his return filed under Section 153A in comparison to the original return filed under Section 139(1).....*
> *21. Thus, it is clear that when the A.O. has accepted the revised return filed by the assessee under Section 153A, no occasion arises to refer to the previous return filed under Section 139 of the Act. For all purposes, including for the purpose of levying penalty under Section 271(1)(c) of the Act, the return that has to be looked at is the one filed under Section 153A."*

6. The facts in the present case in fact are that there is difference in the returned income u/s.139(1) and returned / assessed income u/s.153A. The said difference of Rs.1,61,739/- was to be explained by the assessee in order to escape from the provisions of Section 271(1)(c) of the Act. The taxability status of the assessee has been changed during the impugned year is a fact on record. It was submitted by the learned CIT(A) that the difference was attributable to withdrawal of set off of income earned from future and options against loss on share transfers. It was highlighted that the assessee had loss on share transfer and income from future options to the tune of Rs.l,21,539. The assessee in its original return filed

under section 139(1) had set off the said income against the loss incurred. However, while filing return under section 153A, the same was withdrawn in view of the realisation that the same was not permissible as per law. The explanation given by the appellant for disclosing reduced income in the return filed under section 139(1) is factually correct and the said reduced income is not attributable to any income regarding which particulars had not been correctly filed. The erroneous claim made earlier has been withdrawn on realising the mistake at the time of filing the return in response to notice under section 153A. The amount involved is Rs.1,21,539. The said wrong claim could have been discovered by the assessee or could have been noticed by the AO in time after filing the return under section 139(1). However, the said incorrect claim did not get noticed either by the assessee or by the AO and its correction at the time of filing of return under section 153A would not lead to imposition of penalty under section 271(1)(c).

7. I find no infirmity in the order of the learned CIT(A) that the explanation given by the assessee for the difference in the returned income and assessed income is true and nothing *malafide* about the same could be made out. It is also important to note that all the facts necessary with regard to the impugned claim had been duly disclosed by the assessee at the time of filing of return under section 139(1). Learned CIT(A) has rightly relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs. Nalin P. Shah (HUF). In this regard, I find no infirmity in the order of learned CIT(A) who has rightly confirmed the order of the Assessing Officer. Thus, the appeal of the Revenue in ITA No.6436/Del/2016 is dismissed.

8. Now we take up the appeal of the Revenue in ITA No.6437/Del/2016. The brief facts of the case are that the Assessing Officer has wrongly imposed penalty under Section 271(1)(c) to the tune of Rs.788/-. The perusal of the penalty order shows that the assessee had filed return of income under Section 139(1) at Rs.30,46,069/-. The said income was revised during the course of assessment proceedings to Rs30,38,938/-. The reasons for revising the income was on account

of conversion of income from foreign assets amounting to US $529.74 at the higher rate of Rs.50.88 i.e. Rs 28,306 as against the correct conversion amount of Rs.25,790. The assessee on being confronted with proposed penalty submitted before the AO that the impugned mistake was on account of adoption of wrong rate of US $. The AO thereafter highlighted the reliance placed by the appellant on the judgement of ITAT, Delhi F bench in the case of Pawan Kumar Gupta vs ACIT CC6, New Delhi. The AO also placed reliance on the decision of Hon'ble ITAT, Chennai bench in the case of ACIT CC2(5) versus Shrimati J. Maithali. As per the argument made by ld. counsel for the assessee and on perusal of the material on record, I find no infirmity in the order of learned CIT(A) that the return under section 139(1) had been filed on 30.08.2012 declaring an income of Rs.30,46,069/- and the said return had been revised on 19.07.2013 wherein the return income was at a figure of Rs.30,38,938/-. The said revised income had been assessed as such by the Assessing Officer vide assessment order dated 24.3.2014. The reduced income in the revised return was on account of reasons explained by the appellant before the AO as under:

"Comparison of returns filed u/s 139(1) & u/s 153A: The return filed u/s 139(1) is Rs.30,46,069/- & u/s 153A is Rs.30,38,938/- the difference of Rs.7,131/- is because of is in respect of short term capital loss of Rs. 9686 of earlier year and the difference of Rs. 2555 being income from foreign assets converted at wrong rate, now corrected in return u/s 153A.

8.1 During the year, the assessee earned interest income from foreign bank amounting to $ 26.59 and income from foreign assets amounting to $ 529.74. The total income earned is $ 563.33 which has been converted at the rate of Rs. 50.88 i.e. Rs.28,306 which has been rounded off to the higher side of Rs. 28,525.

8.1. In both the returns, income of Rs.25970 u/s 139(1) and Rs.28525 u/s 153A has been included on account of income from foreign bank account and foreign assets."

8.2 The AO thereafter completed the assessment accepting the above explanation as is evident from the assessment order dated 24.03.2014 whereby he has assessed the income at Rs.30,38,938.

8.3 The return revised by the appellant is within the limit stipulated as per section 139(5) and therefore gets substituted by the return filed under section 139(1). Since there is no difference between the income returned in a return filed under section 139 and the assessed income, there is no cause for imposition of penalty under section 271(1)(c). The same is therefore rightly directed to be deleted by learned CIT(A).

9. In the result, appeal of the Revenue is dismissed.

10. To sum up, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on this day 28th April, 2017

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER
Dated: 28/04/2017
Prabhat Kumar Kesarwani, Sr.P.S.
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)
5.DR: ITAT

Asstt. Registrar, ITAT, New Delhi