

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH - 'G', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No. 4397/Del/2012  
AY: 2006-07

ITO  
Ward 35(4),  
New Delhi.

vs.

Surinder Kumar Gupta  
109, Shreshtha Vihar  
Delhi 110 092  
PAN AAPPG1409E

**(Appellant)**

**(Respondent)**

Appellant by : Shri S.S. Rana, CIT DR  
Respondent by : Shri Rohit Garg, CA

**Per ANADEE NATH MISSHRA, Accountant Member**

**ORDER**

(A) This appeal has been filed by Revenue against order dated 16.5.2012 of Ld. CIT(A) – XXVII, New Delhi. The grounds of appeal are as under:

- 1. "The order of the CIT(A) is bad in law and is against the facts of the case.*
- 2. The CIT(A) erred in law and on facts in deleting the penalty amounting to Rs. 2,09,78,600/- made by the Assessing Officer under section 271(1)(c) of the Act by not appreciating the fact that the disclosure of income was the result of search operation on the assessee and not voluntary.*
- 3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that provision of explanation 5(1) & explanation 5(2) of the section 271(1)(c) of the Act are not applicable in this case.*
- 4. Whether the disclosure made in response of the notice u/s 153A(1)(a) in respect of earlier assessment year i.e. A.Y. 2006-07 over and above already returned income after the search operation held on 11.1.2007 can be said voluntary in nature.*
- 5. The CIT(A) erred in law and on facts by ignoring that if in pursuant to search operation penalty is not levied for unearthing of additional income*

*detected during a search, it would be an open incentive to all to conceal their income till such time it is detected by the department.*

*6. The appellant craves leave to add, alter or amend any / all the grounds of appeal before or during the course of hearing of the appeal."*

(B) Original return was filed u/s 139(1) of I.T. Act ("Act" for short) on 15.09.2006 declaring income of Rs. 4,46,315. The assessee belongs to M/s. J M Estate Developers Pvt. Ltd. group of cases and is a Director in the said company. Search and Seizure operation u/s 132(4) of I.T. Act was conducted on 11.1.2007 in the premises of M/s. J.M Estate Developers Pvt. Ltd. and its Directors (including the assessee). During the search cash amounting to Rs. 5,76,400 (i.e. Rs. 4,04,500 + Rs. 1,71,900) and jewellery valued at Rs. 31,09,165 (i.e. Rs. 19,58,357 + Rs. 11,50,808/-) were found from the premises of the assessee; out of which cash amounting to Rs. 4,50,000 was seized while no jewellery was seized. In a statement u/s 132(4) of I.T. Act, by a Director of the said company (M/s. J M Estate Developers Pvt. Ltd.) a disclosure of additional income of Rs. 16 crores was voluntarily made on behalf of the Directors of the said company and on behalf of the relatives of the Directors. Specifically in the case of the assessee, a total disclosure of additional income amounting to Rs. 8,27,86,699 was made including Rs. 6,23,25,000/- for this assessment year (i.e. for assessment. Year 2006-07). Notice u/s 153A was issued to the assessee in response to which the assessee filed return declaring income of Rs. 6,27,71,315/-which is the total of aforesaid Rs. 4,46,315 (income as per original return) and aforesaid Rs. 6,23,25,000/- (disclosure of additional income). The aforesaid income of Rs. 6,27,71,315 as per return u/s 153A of I.T. Act was accepted by the Assessing Officer and income was assessed at Rs. 6,27,71,315/- vide assessment order dated 31.12.2008 u/s 153A rws 143(3) of I.T. Act. Thus no further addition was made by the Assessing Officer in aforesaid

assessment order dated 31.12.2008 ; and returned income of Rs. 6,27,71,315/- was accepted by him. However, the Assessing Officer initiated penalty proceedings u/s 271(1)(C) of I.T. Act expressing the view that the assessee had concealed income, as the disclosure of additional income of aforesaid Rs. 6,23,25,000/- was the consequence of search. Order dated 26.6.2009 was passed u/s 271(1)(c) of I.T. Act wherein penalty amounting to Rs. 2,09,78,595/- was levied. Against this order dated 26.6.2009 the assessee filed revision petition u/s 264 of I.T. Act before Commissioner of Income Tax ("CIT" for short). Vide order dated 10.3.2011 of I.T. Act, Ld. CIT set aside the aforesaid order dated 26.6.2009 and the proceedings were restored back to the file of the Assessing Officer with the direction to dispose off the matter in accordance with the provisions of the I.T. Act viz. a viz judicial pronouncements on the issue, after affording proper opportunity to the assessee. A fresh order dated 29.9.2011 was passed by the Assessing Officer u/s 271(1)(c) of I.T. Act whereby once again penalty amounting to aforesaid Rs. 2,09,78,595/- was levied. Aggrieved, the assessee filed appeal before Commissioner of Income Tax (Appeals), ("CIT(A)" for short). Vide order dated 16.5.2012, Ld. CIT(A) deleted the penalty levied by the Assessing Officer. The present appeal before us has been filed by Revenue against aforesaid order dated 16.5.2012 of Ld. CIT(A).

(B.1) It is relevant to note that besides the disclosure of additional income made on behalf of the assessee as aforesaid ; disclosure of the aforesaid total amount of Rs. 16 crores also included disclosure of a total amount of Rs. 3,69,11,115/- (including Rs. 3,13,85,360/- for assessment year 2006-07) on behalf of Mr. Neeraj Jindal, another Director of the said company (M/s. J M Estate Developers Pvt. Ltd ). In similar facts and circumstances, the concerned Assessing Officer had levied penalty u/s 271(1)(c) of I.T.

Act, which was deleted by Ld. CIT(A). On appeal by Revenue, Co-ordinate Bench of Income Tax Appellate Tribunal (ITAT) Delhi upheld the order of Ld. CIT(A) and dismissed the appeal of Revenue vide order dated 19.8.2015 in the case of ITO vs. Neeraj Jindal in appeal numbers 4400 & 4401/Del/2012 for assessment. Year 2005-06 and 2006-07. On further appeal by Revenue, Hon'ble Jurisdictional High Court vide decision reported at Pr. CIT vs. Neeraj Jindal (2017) 79 taxmann.com 96(Delhi) dismissed the appeal of Revenue and decided the matter in favour of that assessee (i.e. in favour of Mr. Neeraj Jindal) while upholding the order of ITAT. The question of law framed for decision by the Hon'ble High Court in the case of Pr. CIT vs. Neeraj Jindal (supra) was as under :-

“Did the ITAT correctly interpret S. 271 (1)(c) of Income Tax Act, 1961 read together with Explanation 5 in proceeding to delete the penalty imposed by the Assessing Officer in the first instance ?”

(C) In the course of appellate proceedings in ITAT in this appeal the assessee filed a paper book containing 52 pages and also filed written submissions titled “BROAD PROPOSITIONS ” wherein the assessee has placed reliance on many case laws pronounced in decided precedents. On the other hand the Ld. CIT (DR) appeared for revenue also filed written submissions wherein reliance was placed on case laws pronounced in certain other decided precedents. At the time of hearing before us the Ld. CIT(DR) supported the order of the AO and reiterated the contentions raised in written submissions filed by him. On the other hand the Ld. AR of the assessee pleaded that the issue was squarely covered in favour of the assessee by order of jurisdictional ITAT in the case of ITO vs. Neeraj Jindal (Supra) and by order of the Hon'ble jurisdictional High Court in the case of Pr. CIT vs. Neeraj Jindal (supra). The Ld. AR of

the assessee drew our special attention to the fact that facts and circumstances in the case of Neeraj Jindal (who was, like the assessee in the present appeal, also a Director in M/s. J M Estate Developers Pvt. Ltd. and proceedings in the case of the present assessee as well as in the case of Neeraj Jindal had arisen as a result of search in the case of M/s. J M Estate Developers Pvt. Ltd. and group cases.) Therefore, he contended that the orders of jurisdictional ITAT and of jurisdictional High Court in the case of Neeraj Jindal should be followed in the case of the present assessee also as the facts and circumstances were similar in both cases. The Ld. CIT(DR) appearing for revenue failed to distinguish this case from the case of Neeraj Jindal ; though he contended that provisions of Explanation 5 to section 271(1)(c) of I.T. Act went against the assessee.

(D) We have heard both sides patiently and attentively. We have also perused the materials on record carefully. Further we have considered the precedents and case laws brought to our attention, by the two sides. We find that the order of the Ld. CIT(A) is well reasoned and judicious order. We also find that the coordinate Bench of ITAT Delhi in the case of ITO vs. Neeraj Jindal (supra) has decided the issue in favour of assessee in similar facts and circumstances. We further find that the Hon'ble Jurisdictional High Court in the case of Pr. CIT vs. Neeraj Jindal (supra) has decided the issue in favour of assessee in similar facts and circumstances. We moreover notice that the present assessee and aforesaid Neeraj Jindal are directors of the same company and the proceedings in both the cases has arisen as a result of search u/s 132 of I.T. Act in the group cases of J.M. Estate Developers Pvt. Ltd. and its directors. The Ld. CIT(DR) appearing for revenue has been unable to distinguish the case of the assessee and the case of the aforesaid Neeraj Jindal. The Ld. CIT(DR) has also been unable to point out any infirmity , error or mistake in the order of the Ld. CIT(A) and has not made out the

case for any interference with the order of the Ld. CIT(A). Though the Ld. CIT(DR) argued that provisions of Explanation 5 to section 271(1)(c) of I.T. Act went against the assessee we find that the Hon'ble Jurisdictional High Court in the case of CIT vs. Neeraj Jindal (supra) had specifically considered the applicability of Explanation 5 to Section 271(1)(C) and had decided the issue in favour of the assessee in similar facts and circumstances. In these facts and circumstances, ; and respectfully following the precedents of Hon'ble Jurisdictional High Court in the case of Pr. CIT vs. Neeraj Jindal (supra) and the precedent of coordinate bench of ITAT, Delhi in the case of ITO vs. Neeraj Jindal (supra) we decline to interfere with the order of the Ld. CIT(A) and decide the issue regarding levy of penalty u/s 271(1)(c) of I.T. Act in favour of the assessee. Accordingly the order of Ld. CIT(A) is upheld and the appeal of revenue is dismissed.

Order pronounced in the open court on 27.4.2017.

sd/-  
**(H.S. SIDHU )**  
**JUDICIAL MEMBER**

sd/-  
**( ANADEE NATH MISSHRA )**  
**ACCOUNTANT MEMBER**

Dated: 27<sup>th</sup> April, 2017

**\*Veena\***

Copy forwarded to: -

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

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By Order,

ASSISTANT REGISTRAR