

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 4948/Del/2016 : Asstt. Year : 2012-13

Income Tax Officer, Ward-3(2), Saharanpur (APPELLANT)	Vs	M/s Mohd Rizwan, Mohalla Qureshian, Gangoh, Saharanpur (RESPONDENT)
PAN No. AAWFM5436A		

Assessee by : None

Revenue by : Ms. Bedobani, Sr. DR

Date of Hearing : 06.02.2016	Date of Pronouncement : 28.02.2017
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ORDER

This is an appeal by the department against the order dated 30.06.2016 of Id. CIT(A), Muzaffarnagar.

2. Following grounds have been raised in this appeal:

“1. The order of the Id. CIT(A) Muzaffarnagar may be set aside and the penalty order of the Assessing Officer restored, since the Ld. CIT(A) Muzaffarnagar erred in law and on facts, in deleting the penalty u/s 271(1)(c) of Rs.10,59,300/- in respect of the addition of Rs.34,28,150/- without considering:

a. That despite repeated opportunities, the assessee failed to produce the complete books of accounts and also the audit report under section 44AB, thus rendering the claims made in the return of income

unsubstantiated and unreliable, and liable to be rejected under section 145;

- b. That the assessee made varying claims about the nature of business, such that in the assessment proceedings it claimed to be engaged in trading business of live stock, whereas inquiries by the Assessing Officer revealed that it was actually engaged in trading of raw meat and hide;*
- c. That in the absence of the complete books of accounts, the Assessing Officer estimated the profits based on the results of independent third parties of that area engaged in the same business as the assessee, which is the most reasonable methodology;*
- d. That penalty for concealment and furnishing of inaccurate particulars is imposable where the addition is made on estimate basis due to failure of the assessee to maintain and furnish specific records;*
- e. That penalty for concealment and furnishing of inaccurate particulars is impossible in terms of Explanation 1 appended to section 271 of the Income Tax Act.”*

3. From the above grounds, it is gathered that the only grievance of the department relates to the deletion of penalty of Rs.10,59,300/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. During the course of hearing nobody was present on behalf of the assessee neither any adjournment was sought. Earlier also whenever the case was fixed for hearing, there was no representation from the assessee's side. I, therefore, proceeded to dispose off the appeal *ex-parte* after considering the submission of the Id. DR.

5. Facts of the case in brief are that the AO levied the impugned penalty on the ground that the assessee had concealed particulars of income and furnished inaccurate particulars of income in respect of addition of Rs.34,28,150/-. In the present case, the AO rejected the books of account and estimated the gross profit by applying the GP rate of 1.5% on the sales of Rs.2.8 crores as against G.P. rate of 0.38% declared by the assessee. The AO also levied the penalty on the addition of Rs.34,28,150/- made by observing that the assessee had not produced books of account, purchase vouchers, vouchers for expenses in spite of repeated request.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) who deleted the penalty by observing that the AO made the addition on estimated basis and such addition did not amount to concealment of income or furnishing of inaccurate particulars of income. He also observed that the AO had made addition on the basis of estimation and not on facts or any concrete finding which could lead to such calculation for the imposition of penalty.

7. Now the department is in appeal. The ld. DR supported the order of the AO and submitted that the assessee neither appeared before the AO nor before the ld. CIT(A) and has not given the details which were asked by the AO. Therefore, there was no alternative except to estimate the income of the assessee and since the assessee did not cooperate and furnished the required information, therefore, the income added by the AO was the concealed income of the assessee. He further submitted that the assessee had also not given any explanation before the ld. CIT(A) and it is also not brought on record that the addition made by the AO was sustained by the ITAT or not.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the assessee is non-cooperative from the very beginning. He neither appeared before the AO nor the ld. CIT(A). It is also not clear as to whether the addition made by the AO was contested by the assessee before the ld. CIT(A) and if it was contested as to whether the said addition was deleted or not, if the said addition was deleted, it is not clear as to whether the department preferred any appeal before the ITAT and what was the fate of the said appeal, if any. I, therefore, considering the totality of the facts and in the absence of all the relevant material on record, deem it appropriate to set aside this issue back to the file of the

AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. In the result, the appeal of the department is allowed for statistical purposes.

(Order Pronounced in the Court on 28/02/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 28/02/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR