

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

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 6480/DEL/2013
(ASSESSMENT YEAR-2008-09)**

Praveen Kumar Maheshwari 8875/2, Multani Dhandra, Pahar Ganj, New Delhi AAKPM1582B (APPELLANT)	Vs	ITO Ward-39(4) New Delhi (RESPONDENT)
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Appellant by	Sh. Satyajit Goel, CA
Respondent by	Sh. Umesh Chand Dubey, Sr. DR

Date of Hearing	22.11.2016
Date of Pronouncement	30.11.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 20/09/2013 passed by CIT(A)-XXVIII, New Delhi.

2. The grounds of appeal are as follows:

1. *That on the facts and circumstances of the case, the CIT(A) was not justified in confirming penalty in respect of estimated additions made by the Assessing Officer as per details given in para 5.1 to 5.3 of the appellate order.*

2. *That there is no case of any concealment or furnishing of inaccurate particulars and merely on account of additions made by the Assessing Officer, there cannot be a case of penalty u/s. 271(1)(c).*

3. *That orders of the lower authorities are not justified on facts and same are bad in law.*

3. The assessment in the present case was completed u/s 144 of the Income-tax Act 1961 at an income of Rs.3,64,860/- on 16/12/2010 as against return income of Rs.1,04,863/- after making total addition of Rs.2,60,000/-. During the course of assessment proceedings, the profit was estimated by applying net profit rate of 12.52% on the cash deposited in the bank which comes to Rs.2,60,000/- by the Assessing Officer. The same was added to the declared taxable income of the assessee. The assessee filed appeal before the CIT(A) who also confirmed the order of the Assessing Officer. The assessee accepted the additions and promptly deposited on 12/1/2011 the due tax of Rs.80,767/- against demand raised vide order dated 16/12/2010. The Assessing Officer levied penalty of Rs.60,722/- being 100% of tax u/s 271(1)(c).

4. The penalty order of the Assessing Officer was confirmed by the Ld. CIT(A). Now the assessee is in appeal.

5. The Ld. AR submitted that the assessee has not made any inaccurate particulars or concealed any income. The Assessing Officer has done estimation on the estimate basis on bank deposits for GP rate. The Ld. AR relied upon the order dated 4/11/2015 in case of Manmohan Vs. ITO passed by ITAT Delhi Bench in I.T. A. No. 315/DEL/2014 for the A.Y. 2009-10 wherein it is stated that mere fact with an addition has been accepted or is confirmed being quantum proceedings cannot be conclusion of the imposition of penalty and that no penalty u/s. 271(1)(c) of the Act can be imposed when income is determined on estimate basis. In the said decision the reliance was placed on the judgment of the Hon'ble Calcutta High Court in the case of Durga Kanal Rice Mills Vs. CIT 2004 265 ITR 25 (Cal) wherein it has been held that

quantum proceedings are different from penalty proceedings as well as one more case of Hon'ble Kerala High Court in CIT Vs. P. K. Narayan 1999 238 ITR 905 (Kerala) wherein it was held that despite the addition being confirmed by the Tribunal in quantum proceedings, the penalty can still be deleted by the Tribunal, if the facts are justified

5. The Ld. DR relied upon the penalty order and CIT(A)'s order.

6. We have perused all the records and heard both the parties. The penalty proceedings have been initiated on the gross profit declared by the assessee being too low, taking cognizance of the quantum assessment merely on the ground that the assessee filed incorrect statements and furnishing inaccurate particulars for concealment of income. But there is nothing to show on record that the assessee filed any incorrect details or furnished any inaccurate particulars of the records. The documents and the details were available before the Assessing Officer as relates to gross profit taken by the assessee as well as by the Assessing Officer on cash deposited in the bank. Merely paying the tax after assessment is complete, does not conclude that there is concealment of income or furnishing of inaccurate particulars of income. The GP rate given by the Assessing Officer is also on the estimated basis which does not mention that it is concealment. The penalty cannot be levied in respect of addition made on estimate basis. Therefore, CIT (A) as well as the Assessing Officer has wrongly imposed penalty on the assessee, the same is deleted.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 30th November, 2016.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 30/11/2016
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	22/11/2016	PS
2.	Draft placed before author	22/11/2016	PS
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4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	30.11.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	30.11.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

