

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.- 1306/Del/2016
(ASSESSMENT YEAR-2009-10)**

Nitin Kumar Kuchhal C/o. M/s. Shankar Pipe Store, V.V. Inter College Road Shamli AJVPK1042R (APPELLANT)	vs	ITO Ward-1, Income Tax Office Shamli (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Manoj K. Chopra, Sr. DR

Date of Hearing	05.05.2016
Date of Pronouncement	12.05.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 14/12/2015 passed by CIT (A), Muzaffarnagar pertaining to 2009-10 Assessment Year , where the penalty imposed by the Assessing Officer u/s 271(1)(c) of Rs.27,8000/- has been upheld in appeal.

2. At the time of hearing, no one was present on behalf of the assessee. However, considering the material available on record, it was considered appropriate to proceed with the present appeal ex-parte qua the assessee- appellant on merits, after hearing the Ld. Sr. DR. The relevant facts of the case are that as per AIR Information it was found that the assessee had deposited an amount of Rs. 17,38,900/- in his saving bank account. Accordingly, notice u/s 148 was issued to the assessee and the assessee was required to file its return where income of Rs. 1,30,670/- was declared. After issuance of notices u/s 143(2) and 142(1) etc an addition Rs.2,14,345/- was made based on peak of cash deposited in the saving bank account to the tune of Rs. 3,10,335/- out of which 96,000/- had been deposited in the same bank as salary received from M/s Sandeep Kumar & Sons. As a result of this, addition Rs. 2,14,335/- penalty

proceedings were initiated. In the absence of any satisfactory explanation penalty of Rs. 27,800/- was imposed which was confirmed in appeal by the CIT(A).

3. Aggrieved by this, the assessee is in appeal before the ITAT. The Ld. SR. DR relies upon the orders of the authorities below.

4. On a consideration of the entirety of the facts and circumstances available on record, we find that the penalty order is a mere repetition of the assessment order and how the explanation offered by the assessee was found to be not acceptable has not been brought out in the order. The only reference thereto is that an explanation was offered as the A.O merely refers that the explanation of the assessee was not found to be satisfactory what was the explanation has not been addressed. Before the CIT (A) it is seen that the assessee has canvassed that the peak of addition was covered by cash in hand and the mere fact and it was surrendered should not lead to the conclusion that the addition was to be maintained. The mere fact an addition was accepted during the assessment proceedings it was submitted cannot lead to the conclusion that the assessee had nothing to say. The addition it was submitted was accepted only on account of ensuring peace of mind. On a consideration of these facts and evidences, we find that the explanation of the assessee considering the principle laid down by the Apex Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd and Price Water Cooper 332 ITR 158 Hon'ble Supreme Court can be accepted. Accordingly, the impugned order is set aside and the penalty order is directed to be quashed.

The order is pronounced in the open court on 12th of May 2016.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER
 Dated:- 12/05/2016
**R. Naheed*

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

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	.05.05.2016	PS
2.	Draft placed before author	.05.05.2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	12.05.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	12.05.2016	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.		

