

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1" NEW DELHI
BEFORE SHRI P.K. BANSAL : ACCOUNTANT MEMBER

ITA no. 117/Del/2014
Asstt. Yrs: 2012-13
DCIT Circle 11(1), Vs. M/s Futuristic Solutions Ltd.,
New Delhi. M-50, 2nd Floor, Greater Kailash-1,
New Delhi.
PAN: AAACM 1579 M
(Appellant) (Respondent)

Appellant by : Shri P. Dam Kanunjna Sr. DR
Respondent by : Shri Rajeshwar Prasad Painuly

Date of hearing : 13/11/2015.
Date of order : 30/11/2015.

ORDER

This appeal has been filed by the revenue against the order dated 31/10/2013, passed by the CIT(A)-XIII, Delhi, in appeal no. 136/2012-13or A.Y. 2012-13, by taking following effective ground of appeal:

“On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the penalty of Rs. 4,23,158/- made u/s 140A r.w. section 221 of the Income Tax Act, 1961 for failing to deposit the tax computed on returned income at the time of filing of income tax return.”

2. I heard the rival submissions and carefully considered the same, along with the order of the tax authorities below. I noted that proviso 1 to section 221 is apparently clear that before levying the penalty, the AO must give a reasonable opportunity to the assessee. This proviso reads as under:

“Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.”

3. In this case I noted that the AO has imposed the penalty on the assessee without issuing any show cause notice. Since no show cause notice was issued by the AO to the assessee, therefore, the assessee also could not file any reply whatsoever as to why penalty should not be levied. Under the facts and circumstances, not issuing the show cause notice to the assessee before levying the penalty is the violation of a fundamental rule of law, which is inbuilt in the first proviso to section 221 and, therefore, in my opinion, there is no illegality or infirmity in the order of CIT(A) if the CIT(A) deleted the penalty on this basis. The revenue, even though has filed an appeal before the ITAT, challenging the deletion of the penalty, but could not bring on record or file before me any cogent material or evidence, which may prove that any show cause notice was given to the assessee before levying the penalty u/s 221. Therefore, I am of the view that it is not a fit case, which warrants any interference. I, accordingly, confirm the order of CIT(A).

4. In the result, the appeal filed by the revenue stands dismissed.

Order pronounced in open court on 30/11/2015.

Sd/-
(P.K. BANSAL)
ACCOUNTANT MEMBER

Dated: 30/11/2015.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.