

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SMT BEENA A PILLAI, JUDICIAL MEMBER**

**ITA Nos. 13, 14 & 15/Del/2015
Assessment Years: 1998-99, 1999-2000 & 2000-2001**

Shri Shambhu Dayal Sharma 500, Sainik Vihar Pitampura Delhi 110 034 PAN: AATPS5273Q	Vs.	ITO, Ward 25(1) New Delhi
(Appellant)		(Respondent)

Assessee by:	Sh. Dharender Kumar, C.A.
Revenue by :	Sh. Surender Pal, Sr.D.R.
Date of Hearing	19/11/18
Date of pronouncement	27/11/2018

ORDER

PER BENCH

Present penalty appeals have been filed by assessee against order dated 13/10/14 passed by Ld.CIT(A)-24, New Delhi for Assessment Years 1998-99 to 2000-01 on following grounds of appeal:

ITA No. 13/Del/2015

1) *That the order passed by Learned CIT(Appeals) confirming the penalty levied by the Assessing Officer under section 271(1)(c)*

of the Act is biased, bad in law and in facts and circumstances of the case.

2) That the Learned CIT (Appeals), New Delhi has grossly erred in confirming the penalty levied u/s 271 (1) (c) amounting to Rs.5,76,650/- without appreciating the fact that the assessee had neither furnished inaccurate particulars of his income nor concealed his income.

3) That the Learned CIT (Appeals), New Delhi has grossly erred in confirming the penalty levied under section 271(1)(c) of the Act by the Assessing Officer on deeming addition under section 68 of the Act, amounting to Rs. 19,65,435/-.

4) Without prejudice to the ground no. 2 & 3, the Learned CIT (Appeals) has grossly erred in confirming the penalty levied under section 271(1)(c) of the Act on an addition of Rs. 19,65,435/- for unexplained deposits in the bank accounts of the appellant whereas the actual amount deposited in the bank accounts was Rs. 17,83,612/-.

5) Without prejudice to ground no. 2 and 3 referred to above the Learned CIT (Appeals) has grossly erred sustaining the addition of Rs. 19,65,435/- without allowing set off of an amount of Rs. 1,03,409/- deposited out of declared income.

That the appellant craves leave to add, alter and delete the above grounds of appeal at the time of hearing.”

ITA No. 14/Del/2015

1). That the order passed by Learned CIT(Appeals) confirming the penalty levied by the Assessing Officer under section 271(1)(c) of the Act is biased, bad in law and in facts and circumstances of the case.

2). That the Learned CIT (Appeals), New Delhi has grossly erred in confirming the penalty levied u/s 271 (1) (c) amounting to Rs.4,48,756/- without appreciating the fact that the assessee had neither furnished inaccurate particulars of his income nor concealed his income.

3). That the Learned CIT (Appeals), New Delhi has grossly erred in confirming the penalty levied under section 271(1)(c) of the Act by

the Assessing Officer on deeming addition under section 68 of the Act, amounting to Rs. 14,96,939/-.

4). Without prejudice to the ground no. 2 & 3, the Learned CIT (Appeals) has grossly erred in confirming the penalty levied under section 271(1)(c) of the Act on an addition of Rs. 14,96,939/- for unexplained deposits in the bank accounts of the appellant whereas the actual amount deposited in the bank accounts was Rs. 14,20,354/-.

5). Without prejudice to ground no. 2 and 3 referred to above the Learned CIT (Appeals) has grossly erred sustaining the addition of Rs.14,96,939/- without allowing set off of an amount of Rs.98,100/- deposited out of declared income.

That the appellant craves leave to add, alter and delete the above grounds of appeal at the time of hearing.”

ITA No. 15/Del/2015

1). That the order passed by Learned CIT(Appeals) confirming the penalty levied by the Assessing Officer under section 271(1)(c) of the Act is biased, bad in law and in facts and circumstances of the case.

2). That the Learned CIT (Appeals), New Delhi has grossly erred in confirming the penalty levied u/s 271 (1) (c) amounting to Rs.4,34,650/- without appreciating the fact that the assessee had neither furnished inaccurate particulars of his income nor concealed his income.

3). That the Learned CIT (Appeals), New Delhi has grossly erred in confirming the penalty levied under section 271(1)(c) of the Act by the Assessing Officer on deeming addition under section 68 of the Act, amounting to Rs. 13,55,858/-.

4). Without prejudice to the ground no. 2 & 3, the Learned CIT (Appeals) has grossly erred in confirming the penalty levied under section 271(1)(c) of the Act on an addition of Rs. 13,55,858/- for unexplained deposits in the bank accounts of the appellant whereas the actual amount deposited in the bank accounts was Rs. 13,29,608/-.

5). Without prejudice to ground no. 2 and 3 referred to above the Learned CIT (Appeals) has grossly erred in confirming the penalty

levied on an addition of Rs.13,55,858/- without appreciating that a sum of Rs.47,850/- was deposited by the appellant from his returned income which was fully explained.

That the appellant craves leave to add, alter and delete the above grounds of appeal at the time of hearing.”

2. Brief facts of the case are as under:

Original assessment for years under consideration was completed by Ld.AO under section 143(3) read with 147 of Income Tax Act, 1961 (the Act), vide orders dated 23/03/06 at income of Rs.20,86,865/-, Rs.16,18,169/- and Rs.14,03,710/- respectively. For all years under consideration, Ld.AO made addition on account of unexplained bank deposits/loans including interest amounting to Rs.19,65,435/-, Rs.14,96,99/- and Rs.13,55,858/-. While passing final assessment order, Ld.AO initiated penalty proceedings under section 271 (1) (c) of the Act, for concealment of income.

2.1. Thereafter Ld.AO issued notice under section 271 (1) (c) of the Act for furnishing inaccurate particulars and thus concealing his income vide notice under section 274 read with section 271 of the Act dated 30/12/09.

2.2. In meantime, appeal filed by assessee against quantum assessment proceedings before Ld.CIT(A) was dismissed by holding that assessee failed to substantiate his claim of deposits being, out of his agricultural income.

2.3. Before Ld.AO, during penalty proceedings assessee did not file any reply, and therefore Ld.AO concluded that penalty deserves to be levied in present case.

3. Aggrieved by penalty order passed by Ld.AO, assessee preferred appeal before Ld.CIT (A), who confirmed penalty order.

4. Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

5. Ld. Counsel filed Application for Admission of Additional Ground, in respect of all 3 Assessment Years wherein following legal issue has been challenged:

“ 1) that the penalty proceedings had been initiated without any specific charge hence, the order passed under section 271 (1) (c) of the Act is illegal, bad in law and without jurisdiction.”

He placed reliance upon decision of *Hon'ble Supreme Court* in case of *National Thermal Power Company Ltd., vs. CIT* reported in *229 ITR 383*.

6. We have perused submissions advanced by both sides having regard to records placed before us. As issue raised in additional ground is legal in nature and leads to root of case challenging initiation of penalty proceedings, we deem it fit and proper to admit this issue.

6.1. Accordingly, additional ground raised by assessee in respect of all 3 Assessment Years is admitted.

7. While arguing additional ground, Ld. Counsel submitted that, penalty proceedings were initiated in a perfunctory manner, since notice issued by Ld.AO under section 274, do not specify under which limb, penalty proceedings are initiated. In support of his argument Ld.Counsel placed reliance upon notice issued under section 274 read with 271 of the Act at page 6-8 of paper book filed today.

8. On contrary Ld. Sr.DR submitted that in assessment order passed, Ld.AO clearly initiated penalty for concealment and therefore non-striking of relevant portions in notice does not vitiate entire proceedings.

9. We have perused submissions advanced by both sides in light of records placed before us.

10. In our considered opinion, we agree with argument advanced by Ld.Sr.DR, that Ld.A.O. while passing assessment order initiated penalty for concealment.

10.1. Thus in our considered opinion assessee was aware about under which limb penalty has been initiated. Further it is observed that while passing penalty order, Ld.AO levied penalty for concealment. Thus we do not find any merit in arguments advanced by Ld.Counsel regarding jurisdiction of Ld. AO in passing penalty order.

10.2. Accordingly we dismiss additional ground raised by assessee in respect of all 3 assessment years.

11. Coming to merits of the case, Ld. Counsel submitted that total credits in bank account maintained by assessee with State Bank of Patiala amounts to Rs.19,65,435/-. It has been submitted before authorities below that assessee filed following details forming part of amount alleged to be unexplained deposits by Ld.AO:

Bank interest	: Rs. 2,203/-
Agricultural income	: Rs. 2,38,000/-
Advances received from various parties and transfers from family members	: Rs.14,14,000/-
out of taxable income of Rs.1,21,430/-	: Rs. 1,03,409/-

Ld. Counsel submitted that Rs.2,38,000/- in bank account are net income earned during year, from agricultural activities. He submitted that assessee had agricultural income, which is evident from order passed by Ld.CIT(A) for assessment year 1997-98 which is placed at page 14-15 of paper book, wherein

then Ld.CIT(A) records that agricultural income in preceding assessment year has been accepted upon verification by an inspector.

12. Next amount pertains to bank deposit of Rs.14,14,000/-, which Ld.Counsel submitted that these were monies received as advance from various parties against proposed sale of land. Assessee furnished copies of agreement to sell evidencing receipt of amount of Rs.8,50,000/-from parties concerned, which is placed at page 21-40 of paper book. Ld. Counsel submitted that three parties from whom monies has been received had submitted confirmation to the effect, along with returns filed for assessment year 2000-2001. He submitted that these persons could not be produced before Ld.AO, since summons issued was after 10 years of alleged sale. It was contended by Ld. Counsel that parties who had given advances towards purchase of land, are income tax assessees. Ld. Counsel submitted that assessee filed details of advances received from family members, amounting to balance Rs.5,90,000/- along with their bank statements at page 41-45 of paper book. Ld. Counsel submitted that, all necessary details for verification by Ld.AO was placed in paper book.

13. On contrary, Ld.Sr.DR placed reliance upon orders passed by authorities below, and submitted that assessee failed to establish alleged agricultural income and also has not discharged its onus under section 68 of the Act, in respect of advances received from parties and family members. Ld.Sr.DR submitted that, it is under these circumstances that addition was confirmed by this *Tribunal* in quantum proceedings.

14. We have perused submissions advanced by both sides in light of records placed before us.

15. In our opinion assessee had filed details regarding deposits and sources from where deposits have been made in bank account. Merely because parties were not produced before Ld.AO to establish genuineness of transaction, cannot lead to concealment. At the most addition deserves to be sustained as has been already confirmed by this Tribunal. In our view alleged addition forms part of records and therefore there cannot be any concealment as has been alleged by authorities below. We are therefore inclined to delete penalty.

15.1. Accordingly grounds raised by assessee on merits stand allowed.

16. In the result, appeals filed by assessee for A.Y. 1998-99, 1999-2000 and 2000-2001 stand allowed.

Order pronounced in the Open Court on 27/11/2018.

Sd/-

(RK PANDA)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dated: 27th November, 2018

- gmv

Copy forwarded to :

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

// true copy //

BY ORDER

ASSISTANT REGISTRAR
ITAT, New Delhi

	Date
Draft dictated on dragon	19/11/18
Draft placed before author	19/11/18
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
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File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	