IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 519/Del/2015 : Asstt. Year : 1998-99
ITA No. 520/Del/2015 : Asstt. Year : 1999-00
ITA No. 522/Del/2015 : Asstt. Year : 2000-01
ITA No. 523/Del/2015 : Asstt. Year : 2000-01
ITA No. 525/Del/2015 : Asstt. Year : 2001-02
ITA No. 526/Del/2015 : Asstt. Year : 2001-02
ITA No. 528/Del/2015 : Asstt. Year : 2002-03
ITA No. 529/Del/2015 : Asstt. Year : 2002-03
ITA No. 530/Del/2015 : Asstt. Year : 2002-03
ITA No. 531/Del/2015 : Asstt. Year : 2003-04
ITA No. 532/Del/2015 : Asstt. Year : 2003-04

ACIT, Circle-76(1), New Delhi	Vs	M/s Northern India Transport Co., 8551, Gulshan Guest House, 2nd Floor, Roshanaa Road, Delhi-110007
(APPELLANT)		**(RESPONDENT)**
PAN No. AAFFN0106P		

Assessee by : Sh. S. K. Gupta, CA
Revenue by : Ms. Shefali Swaroop, CIT DR

Date of Hearing : 12.02.2018		**Date of Pronouncement : 26.02.2018**

ORDER

Per Bench:

These appeals by the department are directed against the separate orders each dated 27.10.2014 of ld. CIT(A)-XII, New Delhi.

2. Since, the common issues are involved in these appeals which were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. Common grounds raised in these appeals read as under:

"Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the penalties u/s 272A(2)(k), 272A(2)(g) and 271C when the department has not accepted the findings of the Hon'ble ITAT in the quantum appeal?"

4. From the above ground, it is gathered that the grievance of the department relates to the deletion of penalties levied by the AO u/s 271A(2)(k), 272A(2)(g) and 271C of the Income Tax Act, 1961 (hereinafter referred to as the Act).

5. During the course of hearing, the ld. Counsel for the assessee at the very outset submitted that the quantum additions on the basis of which these penalties were levied by the AO had already been deleted by this bench of the Tribunal in ITA Nos. 4463 to 4467/Del/2011 for the assessment years 1999-2000 to 2003-04 vide order dated 16.12.2011. The said order has not been reversed by the Hon'ble High Court and that the appeals of the department were dismissed in ITA No. 367/2015 by the Hon'ble Jurisdictional High Court vide order dated 03.07,.2015 (copy of the said order was furnished which is placed on record). The aforesaid contention of the ld. Counsel for the assessee was not controverted by the ld. Sr. DR.

6. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the ITAT vide aforesaid referred to order dated 16.12.2011

deleted interest levied by the AO u/s 201(1)/201(1A) of the Act and the Hon'ble Jurisdictional High Court, dismissed the appeal of the department filed against the aforesaid referred to order. In the present case, the finding of non-compliance of TDS provision attributable to the assessee, as given by the AO in the assessment order stands knocked off. Therefore, the impugned penalties were rightly deleted by the ld. CIT(A). We think it appropriate to reproduce the relevant findings given in paras 13 & 14 of the aforesaid order dated 16.12.2011 by the ITAT which read as under:

> *"13. We have carefully considered the rival submissions in the light of the material placed before us. We have carefully gone through the order passed by the Assessing Officer u/s 201 (1)/201(1A) of the Act and also the order passed by the learned CIT (A). The ground on which the relief has been given by learned CIT (A) to the assessee are:*
>
> *(i) the issue was thoroughly considered in the first round of the proceedings when liability of the assessee was crystallized and the demand was duly paid;*
> *(ii) All the details were made available to the Assessing Officer during the course of first round of proceedings. The details being available on the record of the Assessing Officer clearly describe that none of the individual payment exceeded Rs.20,000/- and this position was in accordance with the law applicable for the relevant time under the provisions of Section 194-C;*
> *(iii) The absence of books of account during the second round of proceedings cannot be viewed against the assessee as, according to Rule 6F(5), the assessee can validly weed out the books of account and, therefore, the assessee is not presumed to maintain those books of account. In that case the details available with the Assessing Officer on his file were relevant; and*
> *(iv) The order consequential to the second round of the proceedings was barred by limitation in accordance with the decision of Hon'ble Delhi High Court in the case of*

NHK Japan reported in 305 ITR 137 (Del). For this purpose, learned CIT (A) has also relied upon the decision of Special Bench of ITAT Mumbai in the case of Mahindra & Mahindra reported in 122 TTJ (SB) 577.

14. So far as it relates to the last ground that the proceedings have become time barred, it is the case of the learned DR that by virtue of amendment brought into the statute by Finance (No.2) Act of 2009 whereby Section 201 (3) was inserted w.e.f. 1st April, 2010 has clearly described that orders for financial year commencing on or before 1.4.2007 can be passed at any time on or before 31st March, 2011. Therefore, it is the case of the learned DR that learned CIT (A) has wrongly held that the impugned order was time barred. Even if we do not go into the correctness of the submissions of the learned DR, otherwise also, we find that there is no infirmity in the order of the CIT (A) when he has held that the liability of the assessee had been crystalysed during the first round of proceedings i.e., in the year 2003 itself and the entire details were available on the record of Assessing Officer on the basis of which it can be ascertained that no individual item exceed a sum of Rs.20,000/- which was the limit at that time for making a payment and overall limit was not there. It has been shown by the learned AR that in respect of items requiring the deduction of tax under 194C were either below the limit of deduction of tax or appropriate liability was ascertained determined and TDS so ascertained was paid in the year 2003 itself. If it is so, then, we find that on merit there is no infirmity in the order of the CIT (A) vide which it has been held that the assessee does not have any liability of TDS in excess of what was determined and paid during the year 2003. The required evidence has been placed on record in the shape of letters exchanged between the assessee and the Assessing Officer in the year 2003. Therefore, finding no merit in the departmental appeals we dismiss all the appeals filed by the revenue."

7. We, therefore, by keeping in view the totality of the facts of the present case, do not see any infirmity in the impugned order passed by the ld. CIT(A) and accordingly do not see merit in these appeals of the department.

8. In the result, the appeals of the department are dismissed.

(Order Pronounced in the Court on 26/02/2018)

Sd/-
(Suchitra Kamble)
JUDICIAL MEMBER

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

Dated: 26/02/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR