

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA Nos. 5474 - 5475 - 5476/Del/2012
AY: 1998-99, 1999-2000, 2001-02

Sh. B.R.Sharma 11, Sainik Vihar Pitampura New Delhi PAN: AATPS5273Q	vs.	ITO, Ward 25 (1) New Delhi
(Appellant)		(Respondent)

Assessee by : Sh. Ajit Gandhi, C.A.
Department by : Sh. S.N.Pandey, Sr.D.R.

Date of Hearing : 16/05/2019
Date of Pronouncement: 29/05/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present Penalty appeals has been filed by assessee against order dated 21/06/12 passed by Ld. CIT (A)-16, New Delhi for assessment years 1998-99 to 2001-02 on following grounds of appeal:

ITA No. 5474/Del/2012 AY 1998-99

1. *The order of the CIT(A) in confirming the levy of penalty u/s 27(1)(c) amounting to Rs. 7,62,677/- is arbitrary, biased, bad in law and facts and circumstances of the case.*

2. That the Ld.CIT(A) has grossly erred in confirming the levy of penalty u/s 271(1)(c) of Rs. 7,62,677/- disregarding the explanation of the appellant.
3. That the Ld.CIT(A) has grossly erred in levy of penalty u/s 271(1)(c) as the appellant had neither furnished inaccurate particulars of its income nor concealed its income.
4. Without prejudice to above, the Ld. CIT(A) has grossly in confirming the levy of penalty on an amount of Rs. 31,88,816/- whereas the alleged unexplained amount of deposit was Rs. 27,88,816/- as a figure of deposit of Rs. 1,20,000/- dated 15/01/1998 in bank was wrongly substituted as Rs. 5,20,000/- while levying penalty.
5. That the appellant craves leave to add, alter or delete the above grounds of appeal at the time of hearing."

ITA No. 5475/Del/2012 AY 1999-2000

1. The order of the CIT(A) in confirming the levy of penalty u/s 271(1)(c) amounting to Rs.8,12,575/- is arbitrary, biased, bad in law and facts and circumstances of the case.
2. That the Ld.CIT(A) has grossly erred in confirming the levy of penalty u/s 271(1)(c) of Rs. 8,12,575/- disregarding the explanation of the appellant.
3. That the Ld.CIT(A) has grossly erred in levy of penalty u/s 271(1)(c) as the appellant had neither furnished inaccurate particulars of its income nor concealed its income.
4. That the appellant craves leave to add, alter or delete the above grounds of appeal at the time of hearing."

ITA No. 5476/Del/2012 AY 2001-02

1. *The order of the CIT(A) in confirming the levy of penalty u/s 27(1)(c) amounting to Rs. 88,688/- is arbitrary, biased, bad in law and facts and circumstances of the case.*
2. *That the Ld.CIT(A) has grossly erred in confirming the levy of penalty u/s 271(1)(c) of Rs. 88,688/- disregarding the explanation of the appellant.*
3. *That the Ld.CIT(A) has grossly erred in levy of penalty u/s 271(1)(c) as the appellant had neither furnished inaccurate particulars of its income nor concealed its income.*
4. *That the appellant craves leave to add, alter or delete the above grounds of appeal at the time of hearing."*

2. Brief facts of the case are as under:

Return of Rs. 1,76,470/- was filed on 08.02.2006, in response to notice u/Sec 148 of the Income Tax Act, 1961 (the Act). Assessment was made u/s 144 on 23.03.2006 at Rs. 27,22,061/-.

2.1. A search was conducted in case of assessee and his family members on 08.11.2001 and information about large number of cash deposits in various Bank accounts maintained by assessee, was unearthed. Consequently, action u/s 148 was initiated by recording reasons to the effect that cash credits amounting to Rs.25,45.591/- appearing in such account represented unexplained income of assessee. During course of assessment proceedings, assessee failed to comply with statutory notices issued from time to time as a result, assessment was completed based on information

available on record. Assessee went in appeal against assessment order. Ld. CIT(A) vide his order No. 36/06-07 dated 26.12.2006 confirmed assessment order.

2.2. The assessee had filed appeals with this Tribunal against quantum order passed by Ld.CIT(A)-XXIV, and this Tribunal remanded appeals back to Ld.AO for fresh assessment, as done in other group cases of assessee. It has been submitted that due to misplacement of records, said order was neither received by assessee nor by concerned Ward of ITO and that as on date Ld.AR submits that assessee is unable to get copy of such order by this Tribunal.

2.3. Be that as it may, Ld.AR submitted that in the mean while, Ld.AO issued penalty notice to assessee in respect of all assessment years under consideration. Ld. AO was of opinion that onus was on assessee to establish failure to return correct income did not arise from any fraud or any gross or willful neglect on his part. And since assessee failed to do so, 100% penalty on tax sought to be evaded was imposed for filing inaccurate particulars of his income.

3. Aggrieved by order of Ld. AO, assessee preferred appeal before Ld. CIT (A) who upheld view of Ld. AO.

4. Aggrieved by order of Ld. CIT (A) assessee is in appeal before us for all years under consideration on similar grounds.

5. Ld.Counsel before us submitted that in assessment order, penalty has been initiated for furnishing of inaccurate particulars, however, while passing final penalty order by Ld.AO levy has been made for concealment. He submitted that even otherwise present

penalty proceedings are not sustainable as all details was filed during original assessment proceedings after which proceedings under section 158 BC of the Act was initiated. He submitted that Ld.CIT (A) while deciding block assessment had opined that addition made on account of unaccounted bank deposits cannot be sustained as above bank accounts were already disclosed by assessee and nothing was unearthed during course of search in respect of same.

5.1. He submitted that Ld.AO thereafter initiated 148 proceedings in which addition was made under section 68/69 of the Act.

5.2. It has been argued by Ld.Counsel that, merely because disallowance has been made, would not *ipso facto* lead to concealment or filing of inaccurate particulars of income.

5.3. On the contrary Ld.Sr.DR submitted that, assessee has been charged with both concealment as well as filing inaccurate particulars of income by Ld.AO and therefore the penalty order cannot be considered to be bad in law.

5.4. He submitted that, explanation offered by assessee has not been accepted, and therefore under *Explanation 1* of section 271 (1) (c) of the Act, penalty levied deserves to be upheld.

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

7. In the present case, penalty has been initiated on the charge of furnishing inaccurate particulars, but Ld.AO levied penalty on concealment of income. It is observed that assessee was asked to explain penalty on one count whereas levy has been on other count.

This itself calls for quashing of penalty order passed by Ld.A.O. for all years under consideration. We, therefore, quash and set aside the penalty order so passed for all years under consideration. Accordingly we allow the claim of assessee on the ground of legality and validity of Penalty order for all the years under consideration.

8. In the result appeals for all the A.Ys i.e. 1998-99, 1999-2000 and 2001-02 are allowed.

Order pronounced in Open Court on 29th May, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dt. 29th May, 2019

Sd/-

**(BEENA A PILLAI)
JUDICIAL MEMBER**

*GMV

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	<i>Date</i>
<i>Draft dictated on Dragon</i>	<i>21/5/2019 & 29/5/19</i>
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<i>Date of dispatch of Order.</i>	