

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

**BEFORE
DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3186/Del/2023
Asstt. Year: 2013-14

Sanjeev Kumar Goyal 607, Railway Road, Patel Nagar, Hapur Uttar Pradesh 245101 PAN AATPG1790N (Appellant)	Vs.	ITO Ward-3(5) Hapur. (Respondent)
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Assessee by:	None
Department by:	Shri Piyush Tripathi, Sr. DR
Date of Hearing:	14.02.2024
Date of pronouncement:	14.03.2024

O R D E R

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 26.09.2023 of the Ld. Commissioner of Income Tax (Appeals) NFAC, Delhi (**"CIT(A)"**) pertaining to the Assessment Year (**"AY"**) 2013-14.

2. The assessee has raised the following grounds of appeal:-

- “1. The Ld. CIT(A) has erred in confirming the order of the Assessing Officer to confirm the penalty under section 271(1)(c) for Rs. 5,38,200/-.
2. The Ld. CIT(A) has erred in confirming the penalty under section 271(1)(c) without considering the fact that all additions made in the assessment order under section 143(3) were on estimate basis.

3. *The Ld. AO has not marked on the notice for which default the penalty is initiated.”*

3. Briefly stated, the assessee is engaged in the proprietary business of trading and manufacturing of timber products and firewood. He e-filed his return for AY 2013-14 on 04.10.2013 declaring income of Rs. 4,82,499/-. Subsequently, the return was revised on 17.06.2014 declaring income of Rs. 6,34,500/-. His case was selected for scrutiny through CASS for the reason “mismatch in Sales Turnover in Audit Report and ITR”. Statutory notice(s) were issued/served upon the assessee and complied with. The Ld. Assessing Officer (“**AO**”) found that in the original return on gross turnover of Rs. 42,41,398/- net profit of Rs. 4,82,499/- was declared. In terms of percentage it worked out to 11.37% whereas as per tax audit report filed along with the revised return on gross turnover of Rs. 17,89,07,251/- net profit of Rs. 6,34,500/- was declared which worked out to 0.35%. During assessment proceedings, the Ld. AO required the assessee to substantiate trading results and income thereof. However, in the absence of books of account, bills & vouchers, he relied upon the figure of turnover as per the tax audit report but disallowed on adhoc basis 10% of total expenses of Rs. 2,00,21,292/- debited to trading as also profit and loss account amounting to Rs. 20,02,130/- and added the same to the income of the assessee in assessment order framed by him on 22.03.2016 under section 143(3) of the Income Tax Act, 1961 (**the “Act”**). He also initiated penalty proceedings under section 271(1)(c) of the Act for concealing the particulars of income by the assessee.

4. Accordingly, show cause notice(s) were issued on 22.03.2016 and 03.08.2016 in responses to which the assessee requested to keep the penalty proceedings in abeyance till disposal of quantum appeal by the 1st appellate authority namely, the Ld. CIT(A). In first appeal on quantum the appeal of the assessee was dismissed by the Ld. CIT(A), Muzafarnagar vide his appeal order dated 30.11.2017. The Ld. AO issued show cause notice on 11.02.2019 again but no compliance was made by the assessee. The Ld. AO,

therefore, imposed the penalty of Rs. 5,38,180/- under section 271(1)(c) of the Act for concealing particulars of his income applying the provisions of the Explanation-1(B) of section 271(1) of the Act.

5. The assessee filed appeal before the Ld. CIT(A) challenging the levy of impugned penalty on the grounds, inter alia that the Ld. AO erred in holding that the assessee has concealed his income which in quantum assessment was determined only on the basis of estimates. Observations made, inferences drawn and findings recorded in this regard are illegal, arbitrary and bad in law (Ground No.2). The Ld. CIT(A), however confirmed the penalty for two reasons - (i) the reply uploaded on the ITBA on 11.11.2021 reproduced in para 5 of the appellate order had no relevance with the levy of penalty under section 271(1)(c) of the Act for concealing the particulars of his income and not for failure to get his accounts audited; and (ii) no evidence was adduced in support of plea raised in the 'grounds of appeal' and mentioned in the 'statement of facts'.

6. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

7. The appeal was called for hearing but neither the assessee nor any one on his behalf attended, though the Ld. Sr. DR was present. We therefore proceeded to decide the appeal of the assessee ex-parte after hearing the Ld. Sr. DR.

8. We have perused the record. It is observed from the assessment order that apart from the audit report which was furnished along with the revised return the assessee had submitted details during the course of assessment proceedings. It is from those details that the Ld. AO found that in the trading account expenses amounting to Rs. 1,83,33,721/- are claimed to have been incurred on Labour and Wages, Mandi Samiti & Vikas Shulk and power and fuel. This exceeded 10% of total turnover. Likewise, expenses

debited to profit and loss account excluding depreciation amounted to Rs. 16,42,571/-. Thus, the assessee claimed total expenses amounting in all to Rs. 2,00,21,292/-. The Ld. AO disallowed 10% of the total expenses claimed amounting to Rs. 20,02,131/- on adhoc basis. It is, therefore, obvious that the impugned disallowance and consequent addition to the income of the assessee is not due to detection of any concealment of income or furnishing of any inaccurate particulars of income. The Ld. AO disallowed out of expenses claimed by the assessee on estimate and adhoc basis due to absence of supporting evidence and to cover up possible leakage of revenue. However, in our view addition to the income of the assessee on account of said disallowance does not justify levy of penalty under section 271(1)(c) of the Act. Following guideline from the decision of Hon'ble Supreme Court in Dilip N. Shroff vs. JCIT (2007) 291 ITR 519 (SC), Hon'ble Madras High Court decided in CIT vs. Cafco Syndicate Shipping Co. (2007) 294 ITR 134(Mad) that disallowance on the ground that the expenditure was huge or that some vouchers were not available is not good enough to justify penalty in absence of anything more to suggest that the claim was not bonafide. There is no evidence in the case of the assessee that the claim was malafide. There is nothing on record that inadmissible expenses were claimed or that the expenses were incurred for purposes other than assessee's business.

9. The Ld. AO imposed the impugned penalty on the assessee for concealing particulars of his income. Para 7 of the penalty order refers. This is contrary to the facts on record. The Ld. AO proceeded to compute the income of the assessee on the basis of the particulars as per tax audit report of gross turnover, gross profit, GP rate, depreciation, net profit and net profit rate. The Ld. AO accepted the income declared but disallowed 10% of the claim of expenses on the turnover on the basis of details furnished during the course of assessment proceedings. Therefore, in our view there is no concealment of particulars of income by the assessee so as to justify levy of the impugned penalty.

10. It is observed that the Ld. CIT(A) has not given any finding on the contention raised before him by the assessee that it was incorrect on the part of the Ld. AO to hold that the assessee concealed his income only on the basis of disallowance of expenses on estimate. Ld. CIT(A) is silent on the plea of the assessee contained in statement of facts also that the assessee withdrew his quantum appeal challenging the said disallowance on the assurance from the then Ld. AO that no penalty would be levied. No attempt at all has been made by the Ld. CIT(A) to have this plea verified. The Ld. CIT(A) did not give any credence to the above contention and plea of the assessee for no valid reasons.

11. On the facts and in the circumstances of the case as set out above, we hold that the impugned penalty is not justified. It is hereby deleted.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14th March, 2024.

sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

Dated: 14/03/2024
Veena

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Copy forwarded to-

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	

ITA No. 3186/Del/2023
Sanjeev Kumar Goyal vs ITO

Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	