

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

BEFORE : SHRI H.S. SIDHU, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 3635/Del./2013
Asstt. Year :2006-07

Income-tax Officer,
Ward 25(3), New Delhi.

vs.

Ekta Soni,
81, Bhera Enclave,
Paschim Vihar, New Delhi
(PAN: AJGPS 1706A)

C.O. No. 219/Del./2013
(in ITA No. 3635/Del./2013)
Asstt. Year :2006-07

Ekta Soni,
81, Bhera Enclave,
Paschim Vihar, New Delhi
(Appellant)

vs.

Income-tax Officer,
Ward 25(3), New Delhi.

(Respondent)

Revenue by : Sh. Anil Kumar Sharma, Sr. DR
Assessee by : Sh. Tarun Aswani, Advocate

Date of hearing : 31.01.2017
Date of pronouncement : 31.01.2017

ORDER

Per L.P. Sahu, Accountant Member:

The appeal is filed by the Revenue and cross-objection by assessee against the order of the ld. CIT(A)-XXIV, New Delhi dated 18.03.2013 for the assessment year 2006-07 on the following grounds :

Ground raised in Revenue's appeal :

"On the facts and circumstances of the case and in law CIT(A) has erred in –

1. Deleting the penalty u/s. 271(1)(c) amounting to Rs.22,39,640/- imposed by the AO."

Grounds raised in assessee's cross objection:

"The Ld. C.I.T.(A) should had cancelled the penalty also because-

- (a) Reference sent to Valuation Cell is illegal.*
- (b) (i) Valuation Report is illegal as copy of reference was not supplied, (ii) Valuation Officer did not give opportunity, (iii) Valuation Officer did not supply draft Valuation Report. (iv) Valuation Officer did not supply final Valuation Report.*
- (c) Even the A.O. did not supply copy of valuation report and simply wrote in order sheet that Valuation Report is discussed.*
- (d) The Valuation report was supplied after 2 1/2 months after assessment.*
- (e) Valuation report is invalid being based on Shalimar Bagh which is developed and posh colony on main Ring Road.*
- (f). Addition is invalid as instances of locality have been ignored, in violation of Hon'ble Delhi High Court and Hon'ble Supreme Court judgments.*

In view of the above appeal filed by department is infructuous."

2. The brief facts of the case are that the penalty proceedings u/s. 271(1)(c) of the IT Act were initiated against the assessee on the basis of addition of Rs.73,45,540/-, being the difference between the cost of property

declared by the assessee and the fair market value determined by the DVO. This addition was confirmed from the stages of first appellate authority and the ITAT. On the basis of this addition, the Assessing Officer imposed a penalty of Rs.22,39,540/- u/s. 271(1)(c) of the Act representing to 100% of the tax sought to be evaded. The assessee challenged the penalty order in appeal before the first appellate authority and the Id. CIT(A) allowed the appeal of the assessee vide impugned order. It is this order which has been challenged by the Revenue in this appeal before the Tribunal. The assessee has also filed cross objection in support of the impugned order.

3. During the course of hearing, the Id. DR relied on the order of the AO and submitted that the penalty imposed by the Assessing Officer on the basis of valuation report of DVO has wrongly been deleted by the Id. CIT(A) which is not justified.

4. On the other hand, the Id. AR of the assessee relying on the order of the first appellate authority, submitted that in the quantum proceedings, the assessee had challenged the impugned addition before the Hon'ble High Court through writ petition No. 419/2014 & CM No. 25141/2015 wherein the Hon'ble jurisdictional High Court has set aside the orders of the authorities below and accepted the petition of the assessee deleting the impugned addition of Rs.73,45,540/-. He, therefore, submitted that in view of the decision of Hon'ble High Court, the penalty so imposed does not survive.

5. After hearing the rival submissions and perusing the material on record before us, we find substance in the contentions of the assessee. The decision of Hon'ble High Court in the quantum proceedings is available on record before us, whereby the orders of the lower authorities in the quantum proceedings stand set aside. Therefore, once, the very basis on which the penalty proceedings were initiated stood collapsed, there remains no justification to sustain the penalty deleted by the ld. CIT(A). We accordingly find no force in the appeal of the revenue and the same is, thus, liable to be dismissed.
6. During the course of hearing, the ld. DR did not press the cross-objection filed by the assessee, hence, the same is dismissed as withdrawn.
7. In the result, the appeal of the Revenue and the cross-objection of the assessee are dismissed.

Order pronounced in the open court on 31.01.2017.

Sd/-
(H.S. SIDHU)
Judicial Member

Sd/-
(L.P. SAHU)
Accountant Member

Dated : 31.01.2017

*aks/-

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| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>CIT(A)</i> |
| (5) <i>Departmental Representative</i> | (6) <i>Guard File</i> |

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*