

आयकर अपीलीय अधिकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष)Before श्री ए. टी. वार्की, न्यायीक सदस्य एवं/and डॉ. ए. एल. सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

आयकर अपील संख्या / I.T.A No. 1546/Kol/2014
निर्धारण वर्ष/Assessment Year: 2007-08

Income-tax Officer, Wd-56(4), Kolkata	Vs.	M/s. Nopany & Sons (PAN: AACFN5493N)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Date of Hearing	20.03.2017
Date of Pronouncement	09.06.2017
For the Appellant/ अपीलार्थी	Md. Ghyas Uddin, JCIT
For the Respondent/ प्रत्यर्थी	Shri S. K. Tulsiyan, Sr. Advocate

आदेश/ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-XXXVI, Kolkata dated 21.03.2014 for AY 2007-08 against the deletion of penalty by the Ld. CIT(A).

2. At the outset itself, the Ld. Counsel for the assessee brought to our notice that the penalty has been imposed on the additions made in the scrutiny assessment dated 31.12.2009 which has been annulled by the Tribunal vide order dated 20.07.2016 in ITA No. 1621 & 1301/Kol/2011 for relevant AY 2007-08 and drew our attention to the order of the Tribunal which we have perused. We note that the Tribunal has found that there was no notice issued to assessee u/s. 143(2) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) before completion of assessment u/s. 143(3) of the Act, so, the Tribunal annulled the assessment order. Since the penalty has been imposed for the additions/disallowances made in consequence to impugned assessment order which has been subsequently annulled

by the Tribunal, so, the penalty does not survive. When the assessment order passed u/s. 143(3) of the Act itself has been found to be null in the eyes of law and, therefore, the penalty order passed on the assessment order also become null in the eyes of law. The case of the assessee is squarely covered by the legal maxim “Sublato Fundamento Credit Opus”, meaning in case a foundation is removed, the super-structure falls. In *Badrinath vs Government Of Tamil Nadu And Ors.* AIR 2000 SC 3243 the Hon’ble Supreme Court held that once the basis of the proceedings is gone all consequential orders and acts would fall on the ground automatically which principle is applicable to the judicial and quasi judicial proceedings also. Therefore, though the Ld. CIT(A) has decided the penalty issue on merits and has given relief to the assessee, we after perusal of the Tribunal’s order annulling the 143(3) order, penalty flowing from the annulled assessment proceeding falls and, therefore, cannot be sustained and, therefore, we confirm the order of the Ld. CIT(A) on this ground also. Therefore, we dismiss the appeal of the revenue.

3. In the result, appeal of the revenue is dismissed.

Order is Pronounced in the open Court on 09.06.2017.

Sd/-

(Dr. A. L. Saini)

(डॉ. ए. एल. सैनी)

Accountant Member

Sd/-

(Aby. T. Varkey)

(ऐ. टी. वार्की)

Judicial Member

Dated : 9th June, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-56(4), Kolkata.
- 2 Respondent – M/s. Nopany & Sons, 3, Pretoria Street, Kolkata-71.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Senior Private Secretary