

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 5171/Del/2016 : Asstt. Year : 2005-06

M/s Cornell Overseas Pvt. Ltd., C-1, Panchsheel Enclave, New Delhi-110017	Vs	Dy. Commissioner of Income Tax, Circle-3(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACC0034F		

Assessee by : Ms. Vandana, CA

Revenue by : Ms. Ashima Neb, Sr. DR

Date of Hearing : 11.12.2017	Date of Pronouncement : 15.12.2017
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ORDER

This is an appeal by the assessee against the order dated 25.07.2016 of Id. CIT(A)-35, New Delhi.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty levied by the AO on the additions of Rs.1,95,320/- and Rs.8,28,304/- on account of disallowances of legal & professional charges and repair & maintenance expenses respectively.

3. During the course of hearing, the Id. Counsel for the assessee at the very outset stated that the additions on the basis of which the impugned penalty was levied by the AO and sustained by the Id. CIT(A) has been deleted by the ITAT in ITA No. 2014/Del/2014 for the assessment year

2005-06 vide order dated 18.10.2017 (copy of the said order was furnished which is placed on record).

4. In her rival submissions, the ld. Sr. DR although supported the order of the ld. CIT(A) but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

5. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the additions on the basis of which the impugned penalty was levied by the AO and sustained by the ld. CIT(A). Now, is not in existence, since the same has been deleted by the ITAT Delhi Bench -Dø New Delhi in ITA No. 2014/Del/2014 vide order dated 18.10.2017. The relevant findings have been given in paras 3 to 5 of the said order which read as under:

“3. We heard the rival submissions alongwith the order of the tax authorities below. We noted that the Assessing Officer has disallowed these expenses as in his opinion and the expenses have been incurred by the assessee in respect of assets taken on lease for getting the enduring benefit. When the matter sent before the ld. CIT(A), we noted that CIT(A) confirmed the order of the Assessing Officer and while confirming the order of the Assessing Officer just as a passing reference made the observation that the assessee did not submit full details of the expenses while we noted from the submissions made by the assessee before the ld. CIT(A) that the assessee has submitted the complete details of the expenses incurred by the assessee for the repair and maintenance from the details of these expenses which are given in para 3 of the submissions made

before the ld. CIT(A). It is apparent that the expenses relate to the plastering, painting and temporary cabin through wood and jypsum board. The expenses so incurred in our opinion has been made by the assessee in connection with the repair and upkeep of the building. These expenses cannot be regarded to be the capital expenditure and the expenditure in our opinion forms part of the current repair. Hon'ble Delhi High Court also in the following cases taken the same view:

- (i) CIT Vs Hi Line Pens (P) Ltd. 306 ITR 182 (Delhi High Court);*
- (ii) CIT Vs Escorts Finance Ltd. (2006) 155 Taxman 559 (Delhi HC);*
- (iii) CIT Vs Amway India Enterprises (2012) 346 ITR 341 (Del.)*

4. Ld. DR even though vehemently relied on the order of the authorities below but could not brought to our knowledge any contrary decision which has taken a different view. We, therefore, set aside the order of the ld. CIT(A) and delete the disallowance made on account of the repair and maintenance expenses.”

6. Furthermore, on a similar issue the Honøble Supreme Court in the case of K. C. Builders & Others Vs ACIT (2004) 265 ITR 562 has held as under:

“Where the additions made in the assessment order on the basis of which penalty for concealment is levied, are deleted, there remains no basis at all for levying penalty for concealment and, therefore, in such a case no penalty can survive and the penalty is liable to be cancelled. Ordinarily, penalty cannot stand if the assessment itself is set aside.”

7. So, respectfully following the aforesaid referred to case, penalty in dispute is canceled.

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

(Order Pronounced in the Court on 15/12/2017)

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

Dated: 15/12/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR