

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.7004/MUM/2016 (A.Y: 2007-08)

A.C.I.T. – 32(3)
R.No.108, 1st Floor, C-11,
Pratyakshkar Bhavan,
BKC Bandra,
Mumbai – 400051

v. M/s. United Builders
Unit No. 17, B-Wing
Ganjawala Apartment
SVP Road, Boriali(W)
Mumbai – 400 092

PAN NO: AABFU 9291 J

(Appellant)

(Respondent)

Assessee by : Shri Govind Javeri
Department by : Shri Pooja Swaroop

Date of Hearing : 18.04.2018
Date of Pronouncement : 25.04.2018

ORDER

PER C.N. PRASAD, JUDICIAL MEMBER

1. This appeal is filed by the Revenue against the order of the Ld. Commissioner of income Tax (Appeals)–44, Mumbai dated 16.09.2016 for the Assessment Year 2007-08 in deleting the penalty levied u/s. 271(1)(c) of the Act.

2. At the outset Ld. Counsel for the assessee submitted that, the quantum addition made in the Assessment Proceedings has been deleted by the Coordinate Bench in ITA.No. 4864/Mum/2013 dated 29.07.2016. Copy of the order is placed on record. It is submitted that since the quantum addition/disallowance is deleted by the Tribunal the penalty levied u/s. 271(1)(c) of the Act will not survive.

3. Ld.DR vehemently fairly concedes the position.

4. We have perused the orders of the Coordinate Bench in quantum proceedings and find that the Tribunal held that there is no justification on the part of the lower authorities in re-characterizing the income earned from sale of land as "income from business" instead of capital gains. We find that penalty was levied by the Assessing Officer for the reason that income was assessed under the head income from business as against income from capital gains and assessee had committed default within the meaning of Explanation 1 to Section 271(1)(c) of the Act in reporting income under head of capital gains as against business income. Since the quantum addition is deleted by the Tribunal the penalty levied u/s.271(1)(c) of the Act will not survive and thus we hold that the Ld.CIT(A) rightly deleted the penalty taking note of the fact that the Tribunal deleted the addition made in quantum proceedings.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 25th April, 2018.

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

Mumbai / Dated 25/04/2018
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum