

**IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 259/NAG/2015
Assessment Year: 2008-09**

The ITO, Ward-2, Patrakar Colony, Yavatmal – 445001	Vs.	Shri Amol Ashok Nilawar, Datta Chowk, Yavatmal – 445001 PAN: ABWPN6625K
(Appellant)		(Respondent)

Revenue by : Shri R.K. Baral (Sr. DR)
Assessee by : Shri Mahavir Atal (AR)

Date of Hearing: 07/05/2018
Date of Pronouncement: 07/05/2018

ORDER

PER RAM LAL NEGI, JM

The Revenue has preferred this appeal against the order dated 01.07.2015 passed by the Commissioner of Income Tax (Appeals)-2, Nagpur, whereby the Ld. Commissioner (Appeals) has allowed the appeal filed by the assessee against penalty order passed under section 271 (1) (c) of Income Tax Act (for short ‘the Act’) and deleted the penalty of Rs. 40,17,029/- levied under the said section.

2. The revenue has challenged the impugned order passed by the Ld.CIT (A) on the following grounds:-

1. *“On the facts and circumstances of the case and in law, the Hon’ble CIT (A) erred in deleting the penalty levied u/s 271 (1)(c) at Rs. 40,17,029/- as the penalty order has no legs to stand.*
2. *On the facts and circumstances of the case and in law, the Hon’ble CIT (A) erred in holding that since the quantum addition confirmed by Hon’ble CIT (A) stands deleted by*

Hon'ble ITAT, the penalty order has no legs to stand ignoring the fact that the Revenue has filed appeal before Hon'ble Court against the order of Hon'ble ITAT in quantum appeal."

3. At the very outset, the Ld. counsel for the assessee pointed out that Since the ITAT has deleted the addition made by the authorities below in quantum appeal in this case and the Hon'ble High Court has confirmed the order of the Tribunal, the penalty does not survive. Therefore, there is no infirmity in impugned order passed by the Ld. CIT(A). Hence, the appeal filed by the revenue is liable to be dismissed.

4. The Ld. departmental representative did not oppose the aforesaid facts that the ITAT has deleted the addition sustained by the authorities below in quantum appeal and the Hon'ble High Court has affirmed the order passed by the ITAT.

5. We have perused the material on record in the light of the submissions made by the Ld. counsel for the assessee. We notice that the AO determined the income of the assessee for the assessment year 2008-09 at Rs. 1,20,03,421/- after making an addition of Rs 1,19,74,990/- holding the sale of the land by assessee as adventure in trade after rejecting the claim of the assessee that the income being the sale proceed of agricultural land is not taxable. In the first appeal the Ld. CIT(A) confirmed the addition. However, in further appeal the coordinate Bench of the Tribunal vide order dated 14.11.2014 set aside the order of the first appellate authority and deleted the penalty. During pendency of the assessee's appeal before the Tribunal, the AO passed penalty order and levied a penalty of Rs.40,17,029/-. The penalty order was challenged by the assessee before the Ld. CIT (A). The Ld. CIT (A) deleted the penalty holding that since the ITAT has deleted the addition in quantum appeal, the penalty order passed by the AO does not survive. The revenue has filed the present appeal against the said order passed by the Ld. CIT(A). We further noticed that the Hon'ble High Court has rejected the appeal filed by the

revenue against the order of the coordinate Bench rendered in quantum appeal holding that no substantial question of law is involve the present appeal.

6. Since, the addition, on the basis of which the AO had levied penalty, has been deleted by the coordinate Bench and the Hon'ble High Court has confirmed the findings of the coordinate Bench, the penalty order passed by the AO does not survive. Hence, there is no infirmity in the impugned order to interfere with the same. We, therefore uphold the order passed by the Ld. CIT(A) and direct the AO to delete the penalty levied u/s 271(1)(c) of the Act.

In the result, appeal filed by the revenue for assessment year 2008-2009 is allowed.

Order pronounced in the open court on 7th May, 2018.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Nagpur, Dated: 07/05/2018

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra, PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. PS/PS)
ITAT, Nagpur