

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.4020/Del./2015

Assessment Year 2008-2009

DCIT, Central Circle, Meerut.	VS	Shri Vipul Goel, 579, Sector-17, Faridabad. PAN ADCPG2917R
(Appellant)		(Respondent)

ITA.No.2247/Del./2015

Assessment Year 2008-2009

Shri Vipul Goel, 579, Sector-17, Faridabad. PAN ADCPG2917R	VS	DCIT, Central Circle, Meerut.
(Appellant)		(Respondent)

For Revenue :	Shri Aziz Ahmed, Sr. D.R.
For Assessee :	Shri Ved Jain, Advocate & Shri Ashish Chadha, C.A.

Date of Hearing :	02.07.2018
Date of Pronouncement :	02.07.2018

ORDER

PER BHAVNESH SAINI, J.M.

Both the cross-appeals are directed against the order of the Ld. CIT(A), Meerut, dated 10.03.2015, for the A.Y. 2008-2009, challenging the order of the Ld. CIT(A) in cancelling part penalty under section 271(1)(c) of the I.T. Act, 1961 and in sustaining part penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Briefly, the facts of the case are that the Ld. CIT(A) in the impugned order noted that Ld. CIT(A) on quantum has deleted 08 additions on different nature. It is also recorded that Ld. CIT(A) on quantum has confirmed 02 additions. The Ld. CIT(A) narrated all these facts in the appellate order and noted that since in quantum appellate order, out of total addition of Rs.5,08,37,905/-, addition of only Rs.3,05,50,316/- has been sustained, therefore, penalty to that extent was confirmed and A.O. was directed to re-workout the quantum of the penalty amount. The appeal of assessee was partly allowed.

3. Both the parties are in appeal. The Revenue challenged the deletion of penalty of the additions deleted by the Ld. CIT(A). The Assessee is in appeal, challenging the penalty order for sustaining the penalty on 02 items.

4. Learned Counsel for the Assessee, at the outset, submitted that quantum cross-appeals have been decided by ITAT, Delhi-D Bench in ITA.No.172/Del./2015 and ITA.No.12/Del./2015, for the A.Y. 2008-2009, vide order dated 28.05.2018. He has submitted that Departmental Appeal have been dismissed by the Tribunal in ITA.No.172/Del./2015 and appeal of Assessee, on which, penalty have been maintained have been decided in ITA.No.12/Del./2015, whereby, both the additions, on which, penalty was levied, have been deleted. Copy of the order is placed on record and provided to the Ld. D.R. who did not dispute the above facts.

5. After considering the rival submissions, we are of the view that no penalty is leviable in the matter. The Ld. CIT(A) deleted 08 additions on merit. The Revenue preferred appeal

before the Tribunal in ITA.No.172/Del./2015 and out of 08 additions deleted by the Ld. CIT(A), Revenue challenged the deletion of 07 additions and Departmental Appeal has been dismissed. The Ld. CIT(A) confirmed the addition on merit in a sum of Rs.23,416/- under section 69C of the I.T. Act and confirmed the addition of Rs.3,05,26,900/- under section 68 of the I.T. Act. Both these additions have been deleted by the Tribunal in ITA.No.12/Del./2015 vide order dated 28.05.2018. Thus, there is no basis for levy of the penalty against the Assessee. Since the quantum additions do not survive, therefore, there is no justification for the authorities below to levy any penalty under section 271(1)(c) of the I.T. Act. In this view of the matter, there is no infirmity in the order of the Ld. CIT(A) in cancelling the part penalty. However, there is no justification to levy penalty on the other additions sustained by the Ld. CIT(A), which have been deleted by the Tribunal. In this view of the matter, we confirm the order of the Ld. CIT(A) in cancelling the part penalty and set aside the remaining order of the Ld. CIT(A) and cancel the part penalty sustained by him.

6. In the result, Departmental Appeal is dismissed and Appeal of Assessee is allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 02nd July, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.