

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

Before Sh. N. K. Saini, AM and Sh. Laliet Kumar, JM

ITA No. 4110/Del/2015 : Asstt. Year : 2006-07

Income Tax Officer, Ward-52(1), New Delhi	Vs	M/s Ganguly Brothers, (Shipra Mall), 19, Gujrat Vihar, Vikas Marg, New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AAGFG7085B		

Assessee by : Sh. Hiren Mehta, CA

Revenue by : Sh. Sanjeet Singh, CIT DR

Date of Hearing : 10.07.2018	Date of Pronouncement : 14.08.2018
-------------------------------------	---

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 07.04.2015 of the Id. CIT(A)-18, New Delhi.

2. The only grievance of the department in this appeal relates to the deletion of penalty of Rs.15,82,975/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

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 has already been deleted by the Id. CIT(A) whose order has been affirmed by the ITAT Delhi Bench 5SMC6, New Delhi in ITA No. 4248/Del/2015 for the assessment year 2006-07 vide order dated 01.08.2017 (copy of the said order was furnished which is placed on record).

4. In his rival submissions, the Id. CIT DR although supported the order of the AO but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

5. After considering the submissions of both the parties and the material available on record, it is noticed that the assessment in this case was framed by the AO at an income of Rs.48,94,100/- as against the returned income of Rs.1,91,260/- u/s 144 of the Act. The AO levied the impugned penalty by passing the *ex-parte* order dated 29.05.2009. In the meantime, the assessee preferred an appeal before the Id. CIT(A) against the additions made by the AO who vide order dated 07.04.2015 deleted the additions, against the said order, the department preferred an appeal before the ITAT Delhi Bench -SMCø, New Delhi in ITA No. 4248/Del/2015 for the assessment year 2006-07 wherein vide order dated 01.08.2017, the order of the Id. CIT(A) was affirmed and the appeal of the department was dismissed. Therefore, the additions on the basis of which, the impugned penalty was levied by the AO is not inexistence.

6. On a similar issue, the Honøble Supreme Court in the case of K. C. Builders & Others Vs ACIT (2004) 265 ITR 562 wherein it has been 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. 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 u/s 271(1)(c) of the Act is not inexistence. Therefore, we are of the view that the Id. CIT(A) was fully justified in

deleting the penalty levied by the AO. In that view of the matter, we do not see any merit in this appeal of the department.

8. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 14/08/2018)

Sd/-
(Laliet Kumar)
JUDICIAL MEMBER

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

Dated: 14/08/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR