

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B-+": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 3209/Del/2015

Asstt. Year: 2009-10

Anand Prakash Prop. Of M/s. National Steel Suppliers 71, Navyug Market Ghaziabad PAN ADDPP5884B	Vs.	ACIT Range-1 New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Dinesh Kumar, Advocate Shri Anshul Agarwal, CA
Department by :	Ms. Ashima Neb, Sr. DR
Date of Hearing	10/09/2018
Date of pronouncement	10/09/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against order dated 27.2.2015 passed by Ld. CIT(Appeals) Muzaffarnagar in relation to the penalty proceedings u/s 271(1)(c).

2 At the outset, Ld. Counsel for the assessee submitted that the impugned penalty proceedings are arising out of original assessment order dated 28.12.2011 passed u/s 143(3) on account of amount of

Rs. 10 lacs surrendered before the AO. However, the said assessment order now has been set aside by the Ld. CIT Ghaziabad in his order passed u/s 263 dated 30.3.2014 wherein entire assessment has been set aside to the AO to frame a fresh assessment order. In pursuance of such an order u/s 263, fresh assessment order has been passed by the AO vide order dated 25.3.2015 in pursuance of which fresh penalty proceedings have been initiated. Accordingly, the impugned penalty order has become infructuous and deserves to be set aside. Ld. DR also admitted that the impugned penalty order is arising out of original assessment order which has been set aside by the Ld. CIT u/s 263.

3. In view of the aforesaid facts that the quantum of assessment order passed u/s 143(3) which is a subject matter of penalty before us has been set aside by the Ld. CIT in his revisionary division u/s 263 and fresh assessment order has already been passed and penalty proceedings have been initiated. Therefore, the penalty order as well as the proceedings is to be set aside. Accordingly the penalty proceeding by the AO is directed to be deleted on the aforesaid ground.

This decision was pronounced in the Open Court on 10th September, 2018.

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 10/09/2018

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi