

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E", NEW DELHI**

**BEFORE SHRI L.P. SAHU, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.5987/Del/2017
AY: 2009-10**

ACIT, Circle 52(1) New Delhi	Vs.	M/s N.S.Software 12, Ring Road, Lajpat Nagar-IV New Delhi 110 024 PAN: AAEFN9135B
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(Appellant)

(Respondent)

**Department by : Sh. Atiq Ahmad, Sr. DR
Assessee by: None
Date of Hearing : 25/10/2018
Date of Pronouncement: 25/10/2018**

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present penalty appeal has been filed by revenue against order dated 30/05/17 passed by Ld.CIT(A)-24, New Delhi for Assessment Year (A.Y.) 2009-10 on the following grounds of appeal:

"1. On the facts and in the circumstances, the Ld.CIT(A) has erred in deleting the penalty amounting to Rs.53,36,340/- levied by A.O. u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") without giving any specific findings and only relying upon the decision of Hon'ble ITAT pronounced on 28.02.2017 for A.Y. 2005-06 to 2009-10 for quashing of assessment, which has been challenged by the department before the Hon'ble High Court u/s 260A of the Act.

(ii) The appellant craves leave to add, alter or amend any/all the grounds of appeal before or during the course of hearing of appeal."

2. Brief facts of the case are as under:

Assessment orders has been passed by Ld. Assessing Officer (Ld.AO) under section 153C read with 143C (3) of the Act on 28/12/10, wherein claim of

deduction under section 80 IA of the Act was disallowed, and penalty proceedings under section 271 (1) (c) of the Act was initiated for furnishing of inaccurate particulars of income. Against assessment order passed, assessee filed appeal before the Ld.CIT (A). Ld.CIT (A) vide order dated 09/04/14 confirmed the disallowances made by Ld.AO.

2.1. Thereafter Ld.AO issued penalty notice to assessee calling upon to explain as to why penalty under section 271 (1) (c) of the Act should not be levied. The explanation tendered by assessee before Ld. AO regarding non-levy of penalty was rejected. Ld.AO thus levied hundred percent penalty of tax sought to be evaded amounting to Rs.53,36,340/-.

3. Aggrieved by the penalty order passed by Ld. AO, assessee preferred appeal before the Ld. CIT (A). Ld. CIT (A) deleted penalty by observing as under:

“4.1.2. I have considered the submissions of the appellant and have gone through the order of the Hon’ble ITAT. The Hon’ble ITAT in this order dated 28.02.2017, after discussing the matter in detail has held that “the assessment framed u/s 153C/143(3) of the Act for the A.Ys 2005-06 to 2009-10 are thus held as void ab initio and are quashed as such.” Since the quantum addition itself no longer survives, penalty under section 271 (1) (c) necessarily has to be deleted. I direct accordingly. Therefore, these grounds of appeal succeed.”

4. Aggrieved by the order passed by Ld. CIT (A), revenue is in appeal before us now.

5. At the outset, we mention that none has appeared on behalf of assessee before us. Further it is observed from records placed before us that assessee has not been appearing on previous dates too. Considering smallness of the case, and that, the issue stands concluded in favour of assessee by categorical observation of Ld.CIT (A) in impugned order, we are inclined to decide this issue in absence of assessee or its Representatives.

6. Ld. Sr.DR placed reliance upon the order of Ld.AO.

7. We have perused records placed before us. We do not find any infirmity in the findings of Ld.CIT(A). We also conducted our own research, regarding status

of appeal preferred by revenue against the order passed by this Tribunal in quantum appeal pronounced on 28/02/2017 as raised in ground of appeal. We learnt that *Hon'ble Delhi High Court* has dismissed revenue's appeal in *Pr.CIT vs. N.S.Software* reported in (2018) 93 *Taxmann.com* 21 for Assessment Year 2009-10 and has upheld order of this Tribunal passed dated 28/02/17. Thus order dated 25.02.2017 for A.Y. 2009-10 has attained finality.

8. We, therefore, do not find any merit in the ground raised by revenue and uphold the order of Ld.CIT(A). Accordingly ground raised by Revenue stands dismissed.

9. In the result appeal filed by revenue stands dismissed.
Order pronounced in the Open Court on 25/10/2018.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 25th October, 2018

* *manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

Date of Dragon dictation	25.10.18
Date on which the typed draft is placed before the dictating Member	25.10.18
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	