

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

**BEFORE SH. R.K. PAND, ACCOUNTANT MEMBER
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.3744/Del/2017
Assessment Year: 2008-09

DCIT Central Circle . 19 New Delhi	Vs	Yogesh Trading Company, 9/9, Main Road Kailash Nagar, Gandhi Nagar, Delhi PAN AAFY0201F
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Surender Pal, Sr. DR
Respondent by	Sh. Ved Jain, Advocate Sh. Ashish Chadha, CA

Date of hearing:	20/11/2018
Date of Pronouncement:	20/11/2018

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 27.03.2017 passed by the CIT (A)-27, New Delhi relating to A. Y. 2008-09.

2. The grounds raised by the revenue are as under :-

1. *That the Ld. CIT(A) erred in law and on facts in deleting the penalty imposed of Rs.47,83,144/- under section 271 (1) (c) of the Act, without properly appreciating the facts and circumstances of the case.*
2. (a) *The order of the CIT (Appeals) is erroneous and not tenable in law and on facts.*

(b) *The appellant craves leave to add, alter or amend any/ all of the ground of appeal before or during the course of the hearing of the appeal.*

3. The Ld. Counsel for the assessee at the outset submitted that penalty u/s 271 (1) (c) of the I. T. Act was levied on addition of Rs. 1,44,94,375/- on account of short fall in surrender of income. He submitted that the addition so made by the Assessing Officer which was confirmed by the CIT(A) has been deleted by the Tribunal vide ITA No. 1193/Del/2012 order dated 08.02.2017. Since the very basis on which penalty was levied does not survive, therefore, the order of the CIT(A) deleting the penalty is justified and the appeal filed by the revenue has to be dismissed.

4. The Ld. DR fairly conceded that the Tribunal has deleted the addition made by the Assessing Officer which was sustained by the CIT(A). Therefore, the penalty does not survive.

5. After considering the rival arguments made by both the sides and perusal of the orders of the authority below, we find the Assessing Officer had made addition of Rs.1,44,94,375/- on account of short fall in surrender of income. The addition so made by the Assessing Officer was confirmed by the CIT (A). The Assessing Officer thereafter initiated the penalty proceedings u/s 271 (1) (c) of the I. T. Act 1961 and levied penalty of Rs.44,83,144/-. The CIT(A) deleted the penalty so levied by the Assessing Officer on the ground that the Tribunal has deleted the addition made by the Assessing Officer and sustained by the CIT(A). Since the Tribunal has deleted the addition made by the Assessing Officer and sustained by the CIT(A), therefore, the very basis on which

penalty was levied does not survive. Therefore, the order of the CIT(A) cancelling the penalty is fully justified. The same is accordingly upheld and the grounds raised by the revenue are dismissed.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 20.11.2018.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

NEHA

Date:- 20.11.2018

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	20.11.2018
Date on which the typed draft is placed before the dictating 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	20.11.2018
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	