

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A .Nos. 4957& 4958/Del/2016
(ASSESSMENT YEARS - 2005-06 & 2006-07)**

M/S MAGNUM STEELS LTD. 10, ESSEL HOUSE, ASAF ALI ROAD, NEW DELHI PAN No. AADCM6400E) (APPELLANT)	vs	DCIT, CC-16, NEW DELHI (RESPONDENT)
Appellant by	Shri Rajiv Saxena, Adv. & Sh. Shyam Sunder, A.R.	
Respondent by	Ms. Rinku Singh ,Sr. DR.	

ORDER

PER H.S. SIDHU, JM

These appeals filed by the Assessee are directed against the respective Orders of the Ld. CIT(A)-25, New Delhi relevant to assessment years 2005-06 & 2006-07. Since the issues involved in these appeals are common and identical, hence, they were heard together and are being consolidated by this common order for the sake of convenience. The sole issue involved in these appeals is relating to confirmation of levy of penalty of Rs. 4,24,12,311/- and Rs. 12,36,00,074/- made u/s. 271(1)(c) of the Act respectively.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing, Ld. Counsel of the Assessee, has stated that ITAT vide its common order dated 18.8.2017 in quantum appeal Nos. 1342, 1343 & 2004/Del/2013 & 3176 & 3177/Del/2014 (Ays. 2005-06 to 2007-08) has deleted all the additions. In this behalf he filed the copy of the Tribunal's Order dated 18.8.2017 in assessee's own case and he requested that in both the appeals the penalty in dispute may be deleted

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. We have carefully considered the submissions and perused the records. We find that in assessee's own case the ITAT vide its common order dated 18.8.2017 in quantum appeal Nos. 1342, 1343 & 2004/Del/2013 & 3176 & 3177/Del/2014 (Ays. 2005-06 to 2007-08) has deleted the additions vide para no. 50, 52 & 70 at page no. 94 & 159 of the order. For the sake of convenience, we are reproducing the relevant finding of the Tribunal as under:-

“50....The issue is involved only in ITA No. 1342/Del/2013 for the assessment year 2005-06. After examining the facts of the case, we find that assessment in this case was originally framed u/s. 143(3) of the Act specifically after examining the investment and Assessing Officer did not find any error and completed the assessment after accepting the investments. these investments have been declared in the books of accounts and the contention of the assessee is that it has filed all the details such as the confirmation, company master data as proof of address, PAN, Auditor's

Report alongwith balance sheet, ITR, MOA/AOA, share application form etc., and the AO did not find any material adverse to the evidences furnished by assessee. It was also submitted that notices issued were served to the shareholders and AO apart from issuing notices to the shareholders did not make any further enquiry / efforts to bring any material contrary to the evidences furnished by assessee, as such, assessee submitted that addition made is not sustainable. On the other hand, Ld. CIT(DR) placed reliance on the orders of the authorities below. Since we have already dealt with the legal issue in favour of the assessee by directing the Assessing Officer to delete the additions made in the assessment framed under section 153A in absence of incriminating material during the search, following the same the addition in question in absence of incriminating material and non-abatement of assessment already framed under section 143(3) before the date of search, does not stand and directed to be deleted.”

“...52. Since we have already dealt the legal issue in favour of the assessee by directing the AO to delete the additions made by the assessment framed u/s. 153A of the Act for the aforesaid assessment year, in absence of incriminating material found during search and

in absence of abatement of assessment order already framed before the search, as such, this issue does not survive for adjudication and stands to be deleted..”

...”70. In view of above discussed binding judicial precedents, evidences produced by assessee, absence of adequate inquiry conducted by the Ld. AO to prove those documents false, absence of any incriminating material during the search and mainly where the Ld. AO himself treated the shares sale transaction as short term capital gain and speculation income which itself shows that there is a transfer of capital assets by the assessee or there is trading in shares with delivery, we are unable to uphold the addition made. In the result, addition made on account of Long Term Capital gain is directed to be deleted.”

6.1 Keeping in view of the facts and circumstances of the case, we find that the additions on which the penalty in dispute was levied, has already been deleted by the ITAT in quantum appeals, i.e. in ITA Nos. 1342, 1343 & 2004/Del/2013 & 3176 & 3177/Del/2014 (Ayrs. 2005-06 to 2007-08) in assessee’s own case as aforesaid, hence, the penalty in dispute will not survive on the additions in dispute. Accordingly, we delete the penalty in dispute in both the appeals.

7. In the result, both the appeals filed by the Assessee stand allowed.

Order pronounced on 05.02.2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 05-02-2019

SR BHATNAGAR

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**

