

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

**BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER  
AND  
SHRI O.P. MEENA, ACCOUNTANT MEMBER**

**IT A No.2133 to 2135/Dcl/2015 Assessment Year: 2007-08 to 2009-10**

M/s True Zone Buildwell Pvt. vs  
Ltd., 12, Ring Road, Lajpat  
NagarO-IV, New Delhi

DCLT, Central Circle-07,  
(previously Central Circle -12),  
ARA Centre, Jhandewalan hxtn,  
New Delhi.

**PAN AABCT98120**

**Assessee by  
AR**

**Shri R.N.Poonia,**

**Revenue by**

**Smt. Naina Soin Kapil, Sr. DR**

**Date of Hearing 06.02.2019**

**Date of Pronouncement 06.02.2019**

**ORDER**

**PER BENCH:**

Challenging the orders dated 16/2/2015 in appeal numbers 463 to 465/13-14 on the file of the learned Commissioner of Income 'tax (Appeals)- 24, New Delhi ("Ld. CIT(A)") whereunder the Ld. CIT(A) confirmed the penalty levied by the learned assessing officer for the assessment years 2007-8 to 2009-10 the assessee preferred these appeals.

2. Brief facts of the case are that the search and seizure operations under section 132 of the Income 'tax Act, 1961 (for short "the Act") were carried out in Rajdurbar group of cases on 31/7/2008 and pursuant to the notice under section 142 (1) of the Act assessee filed their returns, insofar as these appeals are concerned, 2007-08 to 2009-10 for the years. Assessment was complete under section 143 A/143(3) of the Act by

making an addition under section 69C of the Act. Simultaneously Ld. assessing officer initiated proceedings under section 271(1)( e ) of the Act and concluded them by order dated 26/3/2013 with the levy of penalty of Rs. 3,51,372/- for the assessment year 2007-08, Rs. 56,96,220/- for the assessment year 2008-09 and Rs. 2,57,448/-for the assessment year 2009-10 respectively.

3. Assessee preferred appeals against these orders. Ld. CIT(A) by way of impugned orders dismissed the same and confirmed the levy of penalty. Hence the assessee preferred these appeals on identical grounds, stating that there is no evidence with respect to the payment of brokerage and the authorities below did not examine the substantive requirements for the levy of penalty laid down by Lxplanation 1 of section 271 (1)( c ) of the Act, by rejecting the numerous ease laws submitted by the assessee along with the proposition of law coming out from those rulings and without assigning any reason whatsoever for the same. It is further stated that there is no basis for the Ld. CIT(A) to hold that the facts and circumstances of the matter and the logic of the assessing officer with respect to the addition on account of commission payments are different for the years under consideration to the facts and circumstances for the assessment year 2006-07.

4. At the outset Ld. AR submitted that in the quantum appeals preferred by the assessee against the orders of the First Appellate Authority, a coordinate

Bench of this Tribunal deleted the quantum addition. The appellant produced the copy of the order dated 30/9/2018 in ITA numbers 2092 to 2094/del/2012 for assessment years 2007-08 to 2009-10. There is no dispute as to this order by the Revenue.

5. We have gone through the record and the order dated 30/9/2018 in ITA No. 2092 to 2094/del/2012 for the assessment years 2007-08 to 2009-10. After discussing the matter at length, while paragraph No. 25 of the said order a coordinate Bench of this Tribunal reached a conclusion that the quantum addition made on account of payment of brokerage to various brokers for the assessment years had to be deleted. In view of this factual position and on the face of the finding of the Tribunal deleting the quantum addition, we are of the considered opinion that no penalty could survive. We, therefore, direct the Ld. assessing officer to delete the penalty in question for these three years. Grounds of appeals are allowed.

6. In the result, appeals of the assessee are allowed.

**Order pronounced in the Open Court on 06.02.2019.**

**SD/-  
(O.P. MEENA)  
ACCOUNTANT MEMBER**

**SD/-  
(K.NARASIMHA CHARY)  
JUDICIAL MEMBER**

Dated: 6<sup>th</sup> February, 2019 /VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR ITAT  
NEW DELHI