

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

**BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.2251/Del/2016  
Assessment Year: 2008-09

M/s. Agache Associates C/o M/s. S. P. Jain and Associates, 303-305, Bhanot House-17, Yusuf Sarai, Commercial Complex New Delhi – 110049 PAN AAACA9911H	Vs	ITO Company Ward 1 (2) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Anil Jain, CA
Respondent by	Sh. Surender Pal, Sr. DR

Date of hearing:	12/02/2019
Date of Pronouncement:	15/02/2019

**ORDER**

**PER R.K. PANDA, AM:**

1. This appeal filed by the assessee is directed against the order dated 05.01.2016 of the CIT(A)-I, New Delhi relating to A. Y. 2008-09.
2. Levy of penalty of Rs.6 lacs by the Assessing Officer u/s 271 (1) (c) of the Act which has been upheld by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. The Ld. Counsel for the assessee at the outset submitted that as against returned income of Rs.35,580/- the Assessing officer completed the assessment u/s 143 (3) (iii) of the Act on 26.11.2010 determining the total income of Rs.18,98,109/-. In appeal the Ld. CIT (A) confirmed the various additions made by the Assessing officer. Subsequently the assessing officer initiated the penalty proceedings u/s 271 (1) (c) of the IT Act and levied penalty of Rs. 6 lacs u/s 271 (1) (c) of the IT Act. Referring to the copy of the order of the Tribunal dated 17.08.2017, the Ld. counsel for the assessee submitted that the Tribunal in the quantum appeal for assessment years 2005-06, 2008-09 and 2011-12 in ITA Nos.1036/Del/2014, 2232/Del/2014 and 4376/Del/2014 has restored the issue back to the file of the Assessing Officer for fresh adjudication. Since the very basis on which penalty was levied has been set aside to the file of the Assessing Officer by the Tribunal, therefore, the penalty order has no legs to stand. He accordingly submitted that the penalty levied by the Assessing Officer and sustained by the CIT (A) should be deleted.

4. The Ld. DR on the other hand while conceding that the issue has been set aside to the file of the Assessing Officer submitted that this matter may be restored to the file of the Assessing Officer for fresh adjudication.

5. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. It is an admitted fact that the Tribunal vide order dated 17.08.2017 has restored the quantum appeal to the file of the Assessing Officer for fresh adjudication. Therefore, the very basis on which penalty

was levied does not survive. Therefore, penalty levied by the Assessing Officer and sustained by the CIT(A) is liable to be cancelled. We accordingly direct the Assessing Officer to cancel the penalty so levied u/s 271 (1) (c) of the IT Act. However, the Assessing Officer is at liberty to initiate fresh penalty proceedings after the order is passed by him in the light of the direction of the Tribunal. The appeal filed by the assessee is accordingly allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.02.2019

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

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

*\*Neha\**

Date:- 15.02.2019

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	12.02.2019
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	15.02.2019
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	