

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

BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER

ITA No.1717/Del/2015
Assessment Year: 2008-09

M/s. P. M. Buildwell Pvt. Ltd. 34, Sukhdev Vihar, New Delhi -1100225 PAN No. AAACP0672J	Vs	ITO Ward – 14 (1) New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.3883/Del/2018
Assessment Year: 2008-09

M/s. P. M. Buildwell Pvt. Ltd. 34, Sukhdev Vihar, New Delhi -1100225 PAN No. AAACP0672J	Vs	ITO Ward – 14 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Abhishek Mathur, CA
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	18/02/2019
Date of Pronouncement:	21/02/2019

ORDER

PER R.K. PANDA, AM:

1. ITA No.1717/Del/2015 filed by the assessee is directed against the order dated 18.02.2014 of the CIT(A)-XVII, New Delhi relating to A. Y. 2008-09. ITA No.3883/Del/2015 filed by the assessee is directed against the order dated 28.02.2018 of the CIT(A)-XVI, New Delhi relating to A. Y. 2008-09. For the sake of

convenience these appeals were heard together and are being disposed of by this common order.

2. The assessee in various grounds of the above appeals has challenged the exparte order of the CIT(A) in upholding the orders of the Assessing Officer.

ITA No.1717/Del/2015 (A. Y. 2008-09)

3. The Ld. Counsel for the assessee submitted that the assessee wants to withdraw this appeal filed by him for which the Ld. DR has no objection. In view of the above submissions made by Ld. Counsel for the assessee ITA No. 1717/Del/2015 is dismissed as “withdrawn”.

ITA No.3883/Del/2015 (A. Y. 2008-09)

4. The assessee in the grounds of appeal has challenged the order of the CIT(A) in sustaining the penalty of Rs. 4,72,770/- levied by the Assessing Officer u/s 271 (1) (c) of the IT Act.

5. The Ld. Counsel for the assessee at outset drew the attention of the bench to the ground No.2 of the appeal which reads as under :-

2. That the Ld. ITO has erred in law as much as on the facts of the case in imposing the impugned penalty of Rs.4,27,770/- u/s 271 (1) (c) of the IT Act for the alleged concealment of income by way of furnishing alleged inaccurate particulars of its income. He has failed to appreciate that from either of two, only one can be opted/ selected whether the appellant has concealed the income or furnished inaccurate particulars of income, therefore, the penalty order passed by the Ld. AO is bad law.

6. He submitted that the CIT(A) has not decided the above legal ground raised before him. Therefore, he has no objection if this

matter is restored back to the file of the CIT(A) with the direction to adjudicate the same.

7. The Ld. DR has no objection for restoration of this appeal to the file of the Ld.CIT(A) for the limited purpose of adjudicating the ground of appeal No.2 raised before him.

8. After hearing both the sides I find the assessee has taken a legal ground before the CIT(A) challenging the levy of penalty in this case u/s 271(1) (c) of the IT Act. However, the Ld. CIT(A) has not adjudicated the legal ground taken before him. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore this matter back to the file of the CIT(A) with direction to adjudicate the same. Needless to say the Ld. CIT(A) shall grant due opportunity of being heard to the assessee and decide the issue as per fact and law. The ground raised by the assessee is allowed for statistical purpose.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.02.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 21.02.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.02.2019
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	22.02.2019
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	