

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

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER

**ITA No. 7224/Del/2018
Assessment Year: 2014-15**

Akshay Jain, Ch. No. 206-207, Ansal Satyam RDC Raj Nagar, Ghaziabad, Uttar Pradesh. PAN No. AEXPJ2344D	vs	DCIT Circle-1 Ghaziabad, Uttar Pradesh.
APPELLANT		RESPONDENT

Assessee by	Sh. Dinesh Kumar, Adv. Ishita Gupta, CA
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	11.04.2019
Date of Pronouncement	24.04.2019

ORDER

This is an appeal filed by the assessee against the order of Ld. CIT(Appeals), Ghaziabad dated 31.08.2018 for AY 2014-15.

2. The only issue involved in this appeal is that the CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Act.

3. The brief facts of the case are that in an assessment made u/s 143(3) of the Act the Assessing Officer completed the assessment at an income of Rs. 41,20,100/- by making an addition of Rs. 20,19,500/- by treating the long term capital gain from sale of shares shown by the assessee of Rs. 20,19,500/- as

unexplained cash credit u/s 68 of the Act and thereby assessing the income at Rs. 40,20,100/- in place of Rs. 21,00,600/- shown by the assessee.

3. Thereafter, the AO initiated penalty proceedings u/s 271(1)(c) of the Act.

4. On appeal, the Ld.CIT(A) observed that during the course of assessment the AO made addition on account of long term capital gains of Rs. 20,19,500/- by allowing benefit of Rs. 10 lakhs for income disclosed by the assessee under IDS. The CIT(A) observed that on verification made during appeal proceedings revealed that assessee had not declared Rs. 10 lakhs towards long term capital gains in the IDS, therefore, he enhance the income of the assessee by Rs. 10 lakhs and also imposed penalty u/s 271(1)(c) of the Act for failure to substantiate the claim made in the return of income.

5. Before me, the AR of the assessee submitted that the Tribunal vide its order dated 17.01.2019 in ITA No. 4199/Del/2018 in AY 2014-15 deleted the addition of Rs. 30,19,500/- made u/s 68 read with section 115BBE on account of sale of equity shares and hence, submitted that in view of the above findings of the Tribunal penalty levied u/s 271(1)(c) does not survive and requires to be deleted.

6. The DR could not controvert the above submission of the AR of the assessee. I find that it is not in dispute that addition of Rs. 30,19,500/- made u/s 68 read with section 115BBE on account of

sale of equity shares was deleted by the Tribunal vide its order dated 17.01.2019 passed in ITA No. 4199/Del/2018 in AY 2014-15. Therefore, the very basis for levy of penalty not surviving the levy of penalty also does not survive. I, therefore, delete the levy of penalty on addition of Rs. 30,19,500/- made u/s 68 read with section 115BBE of the Act and allow the appeal of assessee.

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

Order pronounced in the open court on 24/04/2019

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER

Dated: 24.04.2019

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	16/04/2019
Date on which the typed draft is placed before the dictating Member	16/04/19
Date on which the typed draft is placed before the Other 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	24.4.19
Date on which the fair order comes back to the Sr. PS/PS	24.4.19
Date on which the final order is uploaded on the website of ITAT	25.4.19
Date on which the file goes to the Bench Clerk	25.4.19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	