

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

**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.6824/Del/2018
Assessment Year: 2008-09**

Jeeshan Ahmad, Vs ITO, Wart -1(2),
S/o: Nafees Ahmad, 855/78, Income Tax Office,
Mustafa Colony, Muzaffarnagr
Muzaffarnagar

**Assessee by: Shri Ankit Gupta, Advocate
Revenue by: Ms NainaSoin Kapil, Sr. DR**

**Date of Hearing 03.05.2019
Date of Pronouncement 03.05.2019**

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 27/8/2018 in appeal No. 05/17-18/MZR by the learned Commissioner of Income Tax (Appeals), Muzaffarnagar ("Ld. CIT(A)"), assessee preferred this appeal challenging the penalty sustained by the Ld. CIT(A).

2. Brief facts relevant for the disposal of this appeal are that during the assessment proceedings for the assessment year 2008-09 learned

Assessing Officer found that the assessee had shown a balance of Rs. 17,76,563/-in his capital account but could not explain the same or furnish any evidence in support of the figures of the capital. However,pursuant to the directions of the Additional Commissioner of Income Tax, Range-1 in the petition under section 144 A of the Act, learned Assessing Officer made an addition of Rs. 16,97,559/-under section 69 A of the Act to the income of the assessee and also initiated and concluded proceedings under section 271(1)(c) of the Act by levy of penalty of Rs. 5,37,100/-under section 271(1)(c) of the Act.

3. Appeal preferred by the assessee against the leavy of the penalty was dismissed by the Ld. CIT(A). Assessee therefore preferred this appeal before us.

4. At the outset, it is brought to our notice by the Ld. AR that a Coordinate Bench of this Tribunal in ITA 2678/del/2017 deleted the quantum addition of Rs. 16,97,559/-made under section 69 A of the Act by the learned Assessing Officer and confirmed by the Ld. CIT(A). He therefore submitted that in view of the deletion of the quantum addition by the Tribunal, the very basis of the penalty stands removed and therefore the penalty cannot be sustained.

5. We heard the Ld. DR. There is no dispute as to the deletion of the quantum addition by the Tribunal. Since the very basis for the penalty now stands removed, while agreeing with the Ld. AR, we find that the

penalty cannot be sustained. On this ground we allow the appeal of the assessee.

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

Order pronounced in the Open Court on 03rd May, 2019.

Sd/-

**(G.D. AGARWAL)
VICE PRESIDENT**

Dated: 03 May, 2019/VJ

sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI