

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.4037, 4038, 4039 & 4040/Del./2018
(ASSESSMENT YEAR : 2010-11, 2011-12, 2012-13 & 2013-14)**

Shri Neeraj Singal, vs. ACIT, Central Circle 3,
W – 29, Greater Kailash Part 2, New Delhi.
New Delhi – 110 048.

(PAN :ANRPS7986B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ashwani Kumar, CA
Shri Aditya Kumar, CA
Shri Rahul Chaurasiya, CA

REVENUE BY : Ms. Pramita M. Biswas, CIT DR

Date of Hearing : 16.05.2019

Date of Order : 28.05.2019

ORDER

PER BENCH :

Since common questions of facts and law have been raised in all the aforesaid appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, Shri Neeraj Singal (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order all dated 05.03.2018 passed by the Commissioner of Income-tax (Appeals)-23, New Delhi, affirming the penalty orders passed u/s

271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment years 2010-11, 2011-12, 2012-13 & 2013-14 on the identical grounds, except the difference in penalty amount, inter alia that :-

“1. That the order dated 05-03-2018 passed by the Commissioner of Income Tax (Appeals)-23, New Delhi is against law and facts on the file as he was not justified to a penalty (Rs.31,87,58,220/-, Rs.45,13,70,205, Rs.25,33,95,450/- & Rs.25,73,62,083/- for AYs 2010-11, 2011-12, 2012-13 & 2013-14 respectively) u/s 271 (1)(c) of the Income-tax Act, 1961, without considering the facts and circumstances of the case and the legal position in as much as no penalty is exigible in the facts & circumstances of the case.

2. That the order dated 05-03-2018 passed u/s 271 (1)(c) of the Income-tax Act, 1961 Commissioner of Income Tax (Appeals)-23, New Delhi is against law and facts on the file as he was not justified to impose a penalty (Rs.31,87,58,220/-, Rs.45,13,70,205, Rs.25,33,95,450/- & Rs.25,73,62,083/- for AYs 2010-11, 2011-12, 2012-13 & 2013-14 respectively) without specifying the charge against which the penalty was being imposed.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 153A of the Act read with section 143 (3) assessing the income of the assessee at Rs.126,44,98,755/- for AY 2010-11 by making addition on account of disallowance of bogus Long Term Capital Gains (LTCG) and on account of commission expenses @ 6% of net gain and on account of bogus purchase of jewellery, AO proceeded to initiate the penalty proceedings u/s 271(1)(c) of the Act for concealment of income. Declining the contentions raised by the assessee, AO proceeded to levy penalty of Rs.31,87,58,220/-, Rs.45,13,70,205, Rs.25,33,95,450/- &

Rs.25,73,62,083/- for AYs 2010-11, 2011-12, 2012-13 & 2013-14 respectively.

4. Assessee carried the matter by way of appeals before the ld. CIT (A) who has confirmed the penalties levied by the AO by dismissing the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. At the very outset, it is brought to our notice by the ld. AR for the assessee that additions made in all the cases u/s 68 of the Act have since been deleted by the Tribunal in *assessee's own case in ITA Nos.1485 to 1487/Del/2018 for AYs 2010-11 to 2012-13 vide order dated 31.10.2018* and *ITA Nos.1488 TO 1490/Del/2018 for AYs 2013-14 to 2015-16 vide order dated 10.01.2019* and as such, penalties levied are not sustainable and brought on record the copy of the *order of the Tribunal dated 31.10.2018 & 10.01.2019* (supra).

7. Undisputedly, the coordinate Bench of the Tribunal vide *orders dated 31.10.2018 & 10.01.2019* (supra) deleted the addition made by the AO on account of disallowance of bogus Long Term Capital Gains (LTCG) and on account of commission expenses @ 6% of net gain and on account of bogus purchase of jewellery. It is settled principle of law

that when addition made in the assessment order on the basis of which penalty for concealment is levied, is not in existence having been deleted by the Tribunal, penalty levied by the AO and confirmed by the Id. CIT (A) is also not sustainable. Reliance is placed on the decision rendered by Hon'ble Apex Court in case cited as *K.C. Builders & Anr vs. ACIT – 265 ITR 562 (SC)* wherein it is held as under :

“when the addition made in the assessment order on the basis of which penalty for concealment is levied have been deleted there remains no basis at all for levying the penalty for concealment and in such case, no penalty can survive and the penalty is liable to be cancelled.”

8. In view of what has been discussed above, penalties levied by the AO and confirmed by the Id. CIT (A) in the aforesaid cases of the assessee qua AYs 2010-11, 2011-12, 2012-13 & 2013-14 are ordered to be deleted. Consequently, all the appeals filed by the assessee stand allowed.

Order pronounced in open court on this 28th day of May, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 28th day of May, 2019

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-23, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**