

**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**

**Early Hearing Appln.No.149/Del/2019
(in ITA No.5383/Del./2018)
(ASSESSMENT YEAR : 2008-09)**

AND

**ITA No.5383/Del./2018
(ASSESSMENT YEAR : 2008-09)**

Shri Sanjeev Goel,
4101, 3rd Floor, Naya Bazar,
Delhi – 110 016.

vs. ITO, Ward 29 (1),
New Delhi.

(PAN :AAHPG2434M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Satyajeet Goel, Advocate
REVENUE BY : Shri Amit Katoch, Senior DR

Date of Hearing : 17.05.2019

Date of Order : 17.05.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Early Hearing Application No.149/Del/2019 dated 15.04.2019 is hereby allowed keeping in view the fact that when addition on the basis of which penalty has been levied and confirmed by AO/CIT (A) has already been deleted by the

Tribunal, penalty levied is prima facie not sustainable, hence the Bench is proceeded to decide the aforesaid appeal by today itself.

2. Appellant, Shri Sanjeev Goel (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 12.07.2016 passed by the Commissioner of Income-tax (Appeals)-34, New Delhi qua the assessment year 2008-09 on the grounds inter alia that :-

“1(i) That on facts and circumstances of the case, the ld. CIT (A) was not justified in confirming penalty u/s 271(1)(c) on the addition of Rs.14,14,000/- made on account of unexplained credit being addition to capital and loan from wife and brother.

(ii) That there being no case of any concealment of income or furnishing of inaccurate particulars, the penalty u/s 271(1)(c) is not sustainable on facts and law.

2. That even otherwise, the addition of Rs.14,14,000/- having been deleted by Hon'ble ITAT vide order dated 27.07.2016 in ITA No.3998/Del/2011, there is no case of any penalty u/s 271(1)(c) of the Act.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') making addition of Rs.10,67,668/- and Rs.14,14,000/- qua disallowance of expenses claimed by the assessee on account of interest and on account of income from undisclosed sources within the meaning of section 68 of the Act respectively, penalty

proceedings u/s 271(1)(c) of the Act were initiated. Declining the contentions raised by the assessee, AO levied the penalty of Rs.7,61,335/- @ 100% u/s 271(1)(c) of the Act.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has restricted the penalty to the extent of addition of Rs.14,14,000/- by partly allowing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. 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 Id. AR for the assessee that addition made by the AO and confirmed by the Id. CIT (A) to the tune of Rs.14,14,000/- u/s 68 of the Act as income from undisclosed sources has been deleted vide ***order dated 27.07.2016 in ITA No.6308/Del/2012*** and as such penalty levied is not sustainable and brought on record the copy of the Tribunal ***order dated 27.07.2016*** (supra).

7. Undisputedly, coordinate Bench of the Tribunal vide ***order dated 27.07.2016*** (supra) deleted the addition made u/s 68 of the Act. In these circumstances, the penalty levied by the AO and

confirmed by Id. CIT (A) is not sustainable in view of the law laid down by the Hon'ble Apex Court in case cited as *K.C. Builders & Anr vs. ACIT – 265 ITR 562 (SC)* because “*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.*” So, in view of the matter, penalty levied by the AO and confirmed by the Id. CIT (A) is ordered to be deleted. Consequently, the appeal filed by the assessee stands allowed.

Order pronounced in open court on this 17th day of May, 2019 after the conclusion of the hearing.

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

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

**Dated the 17th day of May, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-34, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**