

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.2214/Del./2017
Assessment Year 2004-2005

The ACIT, Circle-19(1), Room No.199C, 1 st Floor, C.R. Building, New Delhi.	vs.,	M/s. Oriental Building & Furnishing Co. Ltd., Sardar Mohan Singh Building, Connaught Lane, New Delhi. PAN AAACO0307R
(Appellant)		(Respondent)

For Revenue :	Ms. Rinku Singh, Sr. D.R.
For Assessee :	-None-

Date of Hearing :	10.07.2019
Date of Pronouncement :	10.07.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-7, New Delhi, Dated 20.01.2017, for the A.Y. 2004-2005, challenging the cancellation of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Briefly the facts of the case are that return of income was filed declaring income at Rs.5.85 crores. The assessment was completed under section 147/143(3) of the I.T. Act on 05.12.2011 at an assessed income of Rs.10.24 crores after addition of Rs.9.75 crores on account of short term capital gains and Rs.73,56,000/- on account of re-computation of rental value of property. Penalty proceedings were initiated under section 271(1)(c) of the I.T. Act on both the additions. The A.O. however noted that the Ld. CIT(A) has allowed the appeal of assessee with regard to short term capital gain, but, confirmed the second addition, on which, penalty was levied on the addition of Rs.73,56,000/-. The assessee challenged penalty order before Ld. CIT(A) and it was pleaded that against quantum addition assessee filed appeal before ITAT which have been allowed vide Order dated 15.09.2016 in ITA.No.2012/Del./2014 for A.Y. 2004-2005 in favour of the assessee. It was pleaded that since appeal of assessee have been allowed, therefore, penalty would not survive. The Ld. CIT(A), therefore, noted that since quantum addition of Rs.73,56,000/- which is the

basis for levy of penalty have been deleted, no penalty is leviable. The Ld. CIT(A), accordingly, allowed the appeal of assessee.

3. After considering the submissions of the Ld. D.R. we do not find any merit in the departmental appeal. Since the quantum addition on which penalty was levied have been deleted by the ITAT, therefore, there is no basis for levy of penalty in the matter. There is no error in the order of the Ld. CIT(A) in cancelling the penalty. We, uphold his order and dismiss the departmental appeal.

4. In the result, appeal of the department dismissed.

Order pronounced in the open Court.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 10th July, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.