

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 1236/MUM/2018  
Assessment Year: 2011-12**

The DCIT, Central Circle- 5(1), Room No. 1928, Air India Building, Nariman Point, Mumbai	<b>Vs.</b>	M/s Ramesh Kumar & Co. 50, 2 <sup>nd</sup> Floor, Swastik Plaza, V.L. Mehta Road, JVPD Scheme, Vile Parle (West), Mumbai - 400049 PAN: AAAGR1612D
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri D.G. Pansari (DR)  
Assessee by : None

Date of Hearing: 03/06/2019  
Date of Pronouncement: 28/06/2019

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against the order dated 05.12.2017 passed by the Commissioner of Income Tax (Appeals)-37 (for short 'the CIT(A), Mumbai, for the assessment year 2011-12, whereby the Ld. CIT(A) has allowed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. The revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *"Whether on the facts and circumstances of the case the Ld. CIT (A) has erred in deleting the penalty levied u/s 271 (1) (c) of the Income -tax Act at Rs. 12,06,421/-?"*
2. *"Whether on the facts and circumstances of the case the Ld. CIT (A) erred in not appreciating that the quantum appeal was pending adjudication.?"*

3. This case was fixed for hearing on 03.06.2019. When the case was called out for hearing none appeared on behalf of the assessee. From the perusal of the record, we are satisfied that the registry had informed the assessee about the date of hearing on 27.03.2019. Hence, we decided to dispose of the appeal on the basis of the material on record after hearing the Ld. Departmental Representative (DR).

4. At the outset, the Ld. DR pointed out that in the present case the Tribunal has deleted the addition made by the AO in quantum appeal vide order dated 27.01.2017.

5. We have perused the material on record. We notice that in the present case the AO completed the assessment u/s 143 (3) r.w.s 147 of the Act determining the total income of the assessee at Rs. 6,12,52,900/- as against the declared income of Rs. 3,00,18,690/-, after making addition of Rs. 3,12,34,214/- u/s 69C of the Act. In the first appeal, the Ld. CIT (A) partly allowed the appeal of the assessee and restricted the addition to Rs. 39,04,277/-. The assessee challenged the order passed by the Ld. CIT (A) before the ITAT. The "D" Bench of the Tribunal deleted the addition by following the view taken by the coordinate Bench in assessee's own case for the AY 2010-11 vide order dated 27.01.2017. In the meantime, the AO passed the penalty order u/s 271 (1) (c) of the Act and levied penalty of Rs. 12,06,421/-. The assessee challenged the penalty order before the Ld. CIT (A). The Ld. CIT (A) deleted the penalty levied by the AO. The operative part of the order of the Ld. CIT (A) reads as under:-

*"6. It is evident from the order of the ITAT that the honorable ITAT has decided the appeal in favour of the appellant and deleted the addition. In the case of K.C. Builders vs. ACIT reported at 265 ITR 562/Taxman 461 (SC), the Hon'ble Supreme Court has held that if the quantum addition based on which the penalty is levied, is restored, penalty u/s 271 (1) (c) on the additions/ disallowance made does not sustain. In view*

*of the same, since the quantum addition made in the assessment order is deleted by the Hon'ble ITAT vide Order No. ITA No. 7598/Mum/2014 & ITA No. 608/Mum/2015 dated 27.01.2017, the penalty levied thereon does not survive. On account of these facts, the penalty levied is cancelled. The ground raised becomes infructuous.*

6. As pointed out by the Ld. CIT (A), since the coordinate Bench has deleted the addition on the basis of which the AO has passed penalty order, the Ld. CIT (A) has rightly allowed the appeal of the assessee and deleted the penalty levied u/s 271 (1) (c) of the Act. Hence, there is no infirmity in the order passed by the Ld. CIT (A). We accordingly dismiss the sole ground of appeal of the revenue and direct the AO to delete the penalty.

In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced in the open court on 28<sup>th</sup> June, 2019.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/06/2019

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai