

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6668/Del./2013
(ASSESSMENT YEAR : 2004-05)**

**ITA No.6669/Del./2013
(ASSESSMENT YEAR : 2006-07)**

Shri Pawan Kumar Jain, C/o Prakash K. Prakash, B – 1, Sagar Apartments, 6, Tilak Marg, New Delhi. (PAN : AADPJ4041P) (APPELLANT)	vs. DCIT, Central Circle 3, New Delhi. (RESPONDENT)
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ASSESSEE BY : Shri Saubhagya Agarwal, Advocate
REVENUE BY : Smt. Deepika Mittal, CIT DR

Date of Hearing : 25.09.2019
Date of Order : 01.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

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

2. Appellant, Shri Pawan Kumar Jain (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside the impugned orders both dated 25.10.2013 passed by the Commissioner of Income - tax (Appeals)-XII, New Delhi

affirming the penalty orders both dated 27.11.2012 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment years 2004-05 & 2006-07 on the identical ground except the difference in amount that :-

“That the CIT (A) is erred under the law while confirming the order of A.O. imposing the penalty of Rs.1,20,000/- & Rs.2,07,337/- for AYs 2004-05 & 2006-07 respectively u/s 271(1)(c) of the Act for filing inaccurate particulars of income and its concealment.”

3. Briefly stated the facts necessary for adjudication of the issue at hand are : On the basis of assessment completed under section 153C read with section 143 (3) of the Act, penalty proceedings were initiated in both the aforesaid cases on the ground that addition of Rs.4,00,000/- & Rs.7,00,000/- on account of unexplained investment in unsecured loans for AYs 2004-05 & 2006-07 respectively u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income and concealing particulars of income. Declining the contentions raised by the assessee, Assessing Officer (AO) proceeded to levy the penalty of Rs.1,20,000/- & Rs.2,07,337/- for AYs 2004-05 & 2006-07 respectively.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the penalties 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 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 in both the aforesaid cases u/s 68 of the Act has since been deleted by the Tribunal in assessee's own case in *ITA Nos.3078/Del/2012 & 3080/Del/2012 for AYS 2004-05 & 2006-07 respectively vide order dated 01.01.2016* and contended that the penalty levied and confirmed by the Id. CIT (A) is not sustainable and brought on record the copy of the order of the Tribunal dated 01.01.2016.

7. Undisputedly, coordinate Bench of the Tribunal vide *order dated 01.01.2016* (supra) in assessee's own case deleted the addition made by the AO and confirmed by the Id. CIT (A) in both the aforesaid cases qua AYS 2004-05 & 2006-07. In these circumstances, penalty levied by the AO and confirmed by the Id. CIT (A) is not sustainable in view of the law laid down by the *Hon'ble Supreme Court in 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, penalties levied by the AO and confirmed by the Id. CIT (A) to the tune of 1,20,000/- & Rs.2,07,337/- for AYs 2004-05 & 2006-07 respectively is ordered to be deleted. Consequently, both the appeals filed by the assessee stand allowed.

Order pronounced in open court on this 1st day of October, 2019.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

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

**Dated the 1st day of October, 2019
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**