

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA Nos.2431 to 2433/Del/2017
Assessment Years: 2005-06 to 2007-08

B.R. Associates Pvt. Ltd.,
10 Essel House,
Asaf Ali Road,
New Delhi.

Vs ACIT,
Central Circle-16,
New Delhi.

PAN: AAACB1067H

(Appellant)

(Respondent)

Assessee by	:	Shri Rajiv Saxena & Shri Shyam Sunder, ARs
Revenue by	:	Shri Sanjay Kapoor, Sr. DR
Date of Hearing	:	20.11.2019
Date of Pronouncement	:	22.11.2019

ORDER

PER R.K. PANDA, AM:

The above appeals filed by the assessee are directed against the separate orders dated 27th February, 2017 of the CIT(A)-27, New Delhi relating to assessment years 2005-06, 2006-07 and 2007-08 respectively.

2. In all these three appeals, the assessee has challenged the order of the CIT(A) in confirming the penalty of Rs.75,01,734 for assessment year 2005-06,

Rs.29 lakhs for assessment year 2006-07 and Rs.1,75,66,537/- for assessment year 2007-08 levied by the Assessing Officer u/s 271(1)(c) of the IT Act, 1961. For the sake of convenience, these were heard together and are being disposed of by this common order.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of trading of hardware and still goods. A search and seizure operation u/s 132 of the IT Act was carried out in the case of the assessee on 26th March, 2010. In response to notice u/s 153A, the assessee filed return of income for the above three years. The Assessing Officer, in the order passed u/s 153A/143(3) of the Act, apart from other additions, made addition of Rs.2,05,00,742/- for assessment year 2005-06, Rs.86,15,583/- for assessment year 2006-07 and Rs.5,21,88,167/- for assessment year 2007-08 u/s 68 of the Act treating the capital gain shown on account of sale of shares as unexplained cash credit. The CIT(A) upheld the addition so made by the Assessing Officer. The Assessing Officer, thereafter initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of Rs.75,01,734/- for assessment year 2005-06, Rs.29 lakhs for assessment year 2006-07 and Rs.1,75,66,573/- for assessment year 2007-08 u/s 271(1)(c). In appeal, the Id.CIT(A) confirmed the penalty so levied by the Assessing Officer.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The ld. counsel for the assessee, at the outset, filed a copy of the order of the Tribunal in assessee's own case for assessment years 2005-06, 2006-07 and 2007-08 in ITA Nos.4964 to 4966/Del/2012, order dated 10th January, 2019 and submitted that the appeals of the assessee have been allowed in the quantum proceedings and the addition has been deleted on legal grounds in absence of any incriminating material found during the course of search. Therefore, the penalty has no legs to stand and has to be deleted.

6. The ld. DR, on the other hand, heavily relied on the order of the CIT(A) and filed various decisions and submitted that the penalty was rightly levied by the Assessing Officer and sustained by the CIT(A).

7. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Tribunal in assessee's own case, vide ITA Nos.4964 to 4966/Del/2012, order dated 10th January, 2019, allowed the appeals filed by the assessee for above three years on the ground that there is complete absence of any reference to incriminating material found during the course of search. The relevant conclusion of the Tribunal at page 44 and 45 of the order reads as under:-

“Since the facts and circumstances involved in the present case are identical to those involved in the aforesaid decision of Co-ordinate Bench, the same statements were taken adverse against the assessee, there is complete absence of any reference to incriminating material found in the course of search and there being no contrary material on record from the side of Revenue to take a different view, we respectfully follow the decision of Co-ordinate Bench as reproduced above. Accordingly, the appeals of the assessee deserve to be

allowed on the legal aspect of the case in the same line as done by the co-ordinate Bench. We accordingly, need not to enter into the merits of the additions made by the authorities below.

9. In the result, all the three appeals of the assessee are allowed.”

8. Since the addition has been deleted by the Tribunal on the legal aspect that the same is not based on any incriminating material found in the course of search, therefore, the penalty has no legs to stand. Accordingly, the same is directed to be deleted. The various decisions relied on by the Id. DR will not help the Revenue since there is no addition after the order of the Tribunal. Accordingly, the order of the CIT(A) is set aside and the Assessing Officer is directed to cancel the penalty.

9. In the result, the appeals filed by the assesseees are allowed.

The decision was pronounced in the open court on 22.11.2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 22nd November, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi