

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'FRIDAY-A': NEW DELHI**

**BEFORE, SHRI G. S. PANNU, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.9117/Del/2019  
(ASSESSMENT YEAR-2009-10)**

M/s. Pushpak Structures and Engineers Private Limited, 97 DSIDC Shed, Okhla Industrial Area, Phase-1, New Delhi-110020 PAN -AAFPC 1887J <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-20(2) New Delhi. <b>(Respondent)</b>
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Appellant By	<b>Mr. Ashish Geol, CA</b>
Respondent by	<b>Sh. Jagdish Singh, Sr.DR</b>
Date of Hearing	<b>20.03.2020</b>
Date of Pronouncement	<b>13.05.2020</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

This appeal is preferred by the Assessee against the order dated 24.09.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-7, New Delhi {CIT (A)} for Assessment Year 2009-10, wherein vide the impugned order, the Ld. CIT (A) has upheld the imposition of penalty of Rs.12,60,000/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (herein after called as 'the Act').

2.0 Brief facts of the case are that the return of income was filed declaring income at Rs.NIL and the assessment was completed at an

income of Rs.40,74,900/- after making addition on account of alleged unexplained share application money amounting to Rs.39,95,000/- and alleged unexplained expenditure on account of commission amounting to Rs.79,900/-. Subsequently, the impugned penalty was imposed and the imposition of penalty was upheld by the Ld. CIT (A). Now, the assessee is before this Tribunal challenging the upholding of the penalty.

3.0 At the outset, the Ld. Authorized Representative submitted that the assessee's appeal against the quantum addition has been allowed by the ITAT and, therefore, the penalty does not survive. He placed on record copy of the order of the ITAT in the quantum appeal bearing ITA No.6925/Del/2017 wherein vide order dated 19.12.2019, the re-assessment proceedings initiated by the Assessing Officer were quashed.

4.0 The Ld Sr. Departmental Representative fairly accepted that since the reassessment proceedings had been quashed by the ITAT, the consequential penalty imposed u/s 271(1)(c) of the Act would not survive.

5.0 Having heard both the parties and after having gone through the order of the Co-ordinate Bench in assessee's own case in the quantum appeal in ITA No.6925/Del/2017, we agree with the contention of the Ld.

Authorized Representative that since the reassessment has been quashed, penalty imposed does not survive. Accordingly, we set aside the order of the Ld. CIT (A) and direct the Assessing Officer to delete the penalty.

6.0      In the final result, the appeal of the assessee stands allowed.

**Order pronounced in the Open Court on 13/05/2020.**

Sd/-  
**(G.S.PANNU)**  
**VICE PRESIDENT**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated:13/05/2020

*PK/Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI