

IN THE INCOME TAX APPELLATE TRIBUNAL [DELHI BENCH "A" : NEW DLEHI]

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT A N D
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA. Nos. 5517/Del/20i7 Assessment Year : 2008-09.

M/s. Sunshine Capital Ltd.,
209, Bhanot Plaza - II,
Desh Bandhu Gupta Road, Paharganj, New Delhi-110 055.

Vs.

DCIT,
Ward : 10 (3),
New Delhi.

PAN : AABCS1913J

[Appellant]

(Respondent)

Assessee by : Shri Piyush Kaushik, Adv.;

Department by : Ms. Rakhi Vimal, Sr. D. R.;

Date of hearing : 28/02/2020

Date of order : 02/03/2020

O R D E R

PER K. NARASIMHA CHARY, J.M. :

This is an appeal filed against order dated 28/02/2017 passed by the Commissioner of Income Tax (Appeals)-30, New Delhi, in the case of M/s. Sunshine Capital Ltd. ("Assessee") for assessment year 2008-09.

2. At the outset, learned Authorized Representative submitted that this is a penalty appeal and the addition giving rise to this penalty was dealt with by co-ordinate bench of the Tribunal in ITA. No. 787 (Del) of 2014 by order dated 08.10.2018. The Tribunal had taken a view that the order of the first appellate

authority has to be set aside and the issue to be remanded to the file of the Assessing Officer.


3. The learned counsel for the assessee produced the copy of the order and we have perused the same.

4. The learned Senior Departmental Representative does not controvert this fact.

5. We have heard the parties and perused the records. Since the very basis for levy of penalty i.e. issue of quantum has been set aside to the file of the learned Assessing Officer, we are of the considered opinion that penalty based on such non-existent ground does not survive. In the fitness of things, we set aside the impugned order and remand the issue of penalty to the file of the Assessing Officer to take a view in consonance with the view to be taken on the aspect of quantum.

6. In the result, the appeal of the assessee is allowed, for statistical purposes.

Order pronounced in the open court on : 02/03/2020

(G. S. PANNU)
VICE – PRESIDENT 

(K. NARASIMHA CHARY)
JUDICIAL MEMBER 

DATED :02/03/2020

MEHTA

ASSISTANT REGISTRAR
ITAT NEW DELHI