

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC-1” BENCH, NEW DELHI
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 6790/Del/2019
(Assessment Year: 2012-13)

M/s KBC Estates Pvt. Ltd., Vs. A-1/21, Jeevan Jyoti Apartments, New Delhi [PAN No. AABCK 7252 Q] (Appellant)	..	ITO, Ward-14(3) New Delhi (Respondent)
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Appellant by :	Shri Shafiq Khan, Adv
Respondent by :	Ms. Sunita Singh, CIT DR

Date of Hearing	25/11/2020
Date of Pronouncement	27/11/2020

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal is directed against the order dated 28.06.2019 passed by the Learned CIT(A)-5, Delhi arising out of the order dated 08.03.2018 passed by the Learned AO under section 271(1)(c) read with section 274 of Income Tax Act, 1961 (hereinafter referred to as “the Act”) for assessment year 2012-13.

2. The assessee company engaged in the business of Builder and Contractor filed its return of income on 28.09.2012 which was finalized under section 143(3) of the Act on 18.03.2015, upon making addition of Rs. 49,54,960/- presuming undeclared income being calculated on the total purchase of Rs. 19063350/- under section 69C of the Act in the absence of verification / non-production of bills / vouchers by the assessee.

Penalty proceeding has also been initiated under section 271(1)(c) of the Act.

3. In appeal, on 08.08.2016 the Learned CIT(A) has been pleased to reject the books of accounts and restricted the addition to the tune of Rs. 1919401/- applying GP ratio @ 7.3% being average of preceding two years.

4. By and under an order dated 08.03.2018, the Learned AO imposed penalty to the tune of Rs. 5,93,095/- on the count of furnishing inaccurate particulars of income of the assessee.

In appeal, the same was confirmed by the Learned CIT(A) on 28.06.2019. Hence the instant appeal before us.

5. At the time of hearing of the instant appeal, Learned Counsel appearing for the assessee submitted before us that the addition has been reduced by the Learned CIT(A) in appeal on estimated GP by applying the provision of Section 145(3) of the Act. It is the settled law that no penalty can be imposed under section 271(1)(c) of the Act on an estimated income / additions and therefore he prays for quashing of the penalty order impugned before us.

6. On the other hand, Learned DR relied upon the orders passed by the authorities below.

7. We have heard the submissions made by the respective parties and perused the relevant materials available on record. It appears that the Learned CIT(A) while reducing / restricting the addition to the tune of Rs. 19,19,401/- rejected the books of accounts u/s 145(3) read with section 144 of the Act; applied GP ratio @ 7.3% being average of preceding two years as best of his judgment. It is a trite law that penalty cannot be imposed on 271(1)(c) on an estimated income and hence, we find substance in the argument made by the Learned AR in favour of the assessee. In fact the Learned DR failed to controvert such position of law. Thus the penalty is not sustainable and liable to be deleted.

8. We find no merit in such penalty imposed by the authorities below. With the above observation, we, therefore, delete the same.

9. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on 27/11/2020.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Delhi; Dated 27/11/2020
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1. Appellant -
 2. Respondent -
 3. CIT
 4. CIT (A)
 5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches