

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'A': NEW DELHI)  
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 3231/Del/2014  
(Assessment Year: 2009-10)**

M/s Apex Buildwell Pvt. Ltd., B-10, Shivalik, Malviya Nagar, New Delhi – 110017.	Vs.	ACIT, Central Circle-17, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: AAFCA0010N</b>		

**ITA No:- 2726/Del/2018  
(Assessment Year: 2009-10)**

M/s Apex Buildwell Pvt. Ltd., 25-B, Sector-32, Gurgaon, Haryana-122001.	Vs.	ACIT, Central Circle-17, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: AAFCA0010N</b>		

**Assessee By** : Shri Abhishek Mathur, Adv.  
**Revenue By** : Shri Shiv Swaroop Singh, Sr. DR

**Per Anadee Nath Misshra, AM**

**(A)** The aforementioned appeals in the case of the Assessee are taken up together for the sake of convenience and brevity; and are hereby disposed off through this Consolidated Order. Grounds taken in these appeals of Assessee are as under:

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"i. That in the present case relevant to the AY- 2009-10 the return of income was filed on 30/09/2009, therefore, the notice u/s. 143[2] of the I T Act, 1961 could be issued last by 30/09/2010. However, as per impugned assessment order the said notice was issued on 13/10/2010. Hence, the said notice as well as the impugned assessment based on that notice is beyond jurisdiction. So far as notice dated 30/08/2010 as said in the impugned appeal order is concerned that notice was neither issued nor served upon the appellant company.

ii. That the appellant company made an advance of Rs. 28,00,000=00 on 02/01/2006 for purchase of land, but because of the appellant company could not comply with the terms of agreement in that respect, the landowners forfeited the said advance amount of Rs. 28,00,000=00. The Ld. Assessing Officer has erred to hold that the said advance amount was in the nature of capital expenditure and to disallow the claim of that amount as revenue expenditure.

iii. That the appellant assessee craves leave to add, alter, amend, revise, modify, substitute or delete any or all grounds of appeal and / or prayer made."

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"1) That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case by not adjudicating the first legal ground of appeal raised by the appellant before him which states that the learned Assessing Officer while imposing the penalty of Rs.8,65,200/- u/sec. 271(l)(c) of the Income Tax Act, 1961 has held that the penalty is being levied for furnishing inaccurate particulars of income thereby concealing true particulars of income without appreciating the fact that in the absence of the clear cut finding as to whether the penalty is being levied for furnishing inaccurate particulars of income or for concealment of income, no penalty can be imposed and thus, the orders of both the learned Assessing Officer as well as the Hon'ble Commissioner of Income Tax are liable to be quashed.

2) That the Hon'ble Commissioner of Income Tax (Appeals) has further erred in law as much as on the facts of the case while confirming the penalty as levied by the learned Assessing Officer by holding that the appellant has lost the appeal in quantum before the Hon'ble CIT (Appeals) without appreciating the fact that the penalty proceedings are independent of the quantum proceedings.

3) That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case by confirming the penalty imposed by

*the learned Assessing Officer without appreciating the merits of the case and also without appreciate the facts that mere claim of expenditure which is not sustainable in law does not amount to furnishing inaccurate particulars of income and thus, the penalty of Rs.8,65,200/- as levied by the learned Assessing Officer on the additions of Rs.28.00 lacs made by him by treating the revenue expenditure as capital expenditure is liable to be deleted.*

*4) That the appellant assail his right to amend, alter and furnishing additional Ground(s) of Appeal, if required at the time of hearing of the appeal.*

*It is, therefore, kindly prayed that the unwarranted penalty of Rs. 8,65,200/- be deleted / quashed after providing a fair opportunity of being heard to the appellant."*

**(B)** At the time of hearing, at the outset, the learned Counsel for the Assessee informed us that the assessee has opted to settle the aforementioned appeals under Vivad Se Vishwas Scheme, 2020 ("VSVS", for short) and that the assessee has already filed the relevant forms. The Ld. Counsel for assessee also drew our attention to letter dated 16<sup>th</sup> January, 2021 filed in Income Tax Appellate Tribunal ("ITAT", for short) giving intimation for the same, and requesting to withdraw both these appeals.

**(B.1)** At the time of hearing before us, the Ld. Counsel for assessee as well as the learned Senior Departmental Representative ("Ld. Sr. DR", for short) submitted before us that these appeals may be treated as withdrawn and may be dismissed on account of the aforesaid VSVS. After due consideration, and in view of the foregoing; and as both sides have agreed to this; we are of the view that both these appeal have become infructuous, and treat these appeals as withdrawn on account of the aforesaid VSVS. Accordingly,

these appeals having become infructuous, are hereby dismissed as withdrawn, subject to settlement of the disputes in the appeals under the aforesaid VSVS.

**(C) Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under these appeals before us are not settled under the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of these appeals, in accordance with law.**

**(D)** In the result, these appeals are dismissed.

**This order has been already pronounced on 19 January, 2021 in Open Court, in the presence of Representatives of both sides; after conclusion of the hearing.**

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

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 19/01/2021  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	