

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4233/DEL/2017 (A.Y 2003-04)

(THROUGH VIDEO CONFERENCING)

Yogendra Chandra Kurele A-20, Naraina Industrial Area Phase-1, Naraina, New Delhi ABAPK7210M (APPELLANT)	Vs	ACIT CC-23 (Now CC-32) New Delhi (RESPONDENT)
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Appellant by	Sh. Sanjay Kumar, Adv
Respondent by	Sh. H. K. Choudhary, CIT(DR)

Date of Hearing	15.02.2021
Date of Pronouncement	24 .02.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 27.03.2017 passed by CIT (A)-30, New Delhi for assessment year 2003-04.

2. The grounds of appeal are as under:-

1. *BECAUSE the learned CIT(A) has erred in law and on facts in upholding the levy of penalty despite the fact that Assessing Officer has not recorded satisfaction as to whether the penalty is initiated for concealment of income or for furnishing inaccurate particulars of income.*

2. *BECAUSE the learned CIT(A) has erred in law and on facts in sustaining*

the penalty order particularly when the notice issued under section 274 of the Act did not specify the charge for which penalty was to be imposed.

3. BECAUSE the learned CIT(A) has erred in law and on facts in confirming the penalty despite the fact that addition made by the Assessing Officer is not sustainable in the absence of any incriminating material found during the course of search in assessment framed under section 153A of the Act.

4. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the imposition of penalty of Rs. 1,43,581/- on account of addition for variation of cash in hand of Rs. 4,55,814/- particularly when the explanation submitted by the assessee stood fully corroborated and substantiated by the facts on record.

5. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the imposition of penalty for concealing the income as well as for furnishing inaccurate particulars of income.

BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.”

3. The assessee is an individual having income from software export and agriculture income from agricultural land at Kanpur and Delhi. Original return of income was filed under Section 139 declaring an income of Rs. 1,00,88,630/- on 01.12.2003. The same was assessed under Section 143(1) vide order dated 25.03.2004. Later on due to search and seizure action under Section 132 on 01.09.2005 notice under section 153A was issued and assessment was framed under Section 153A/ 143(3) vide order dated 28.12.2007 by making various additions/disallowances at an income of Rs. 10,85,27,736/-. Assessment so framed was subjected to appeal before the CIT(A) and the Tribunal. Thereafter, another search under Section 132 was

carried out on 19.01.2009 (2nd in sequence), consequently notice under Section 153A was issued. In response, the assessee filed return showing an income of Rs. 1,26,77,948/- (which represented the income after giving appeal effect) on 09.02.2010. Return so filed was assessed vide order dated 31.12.2010 passed under Section 153A/143(3) of the Act. In the said assessment, the Assessing Officer made an addition of Rs. 4,55,814/- on account of undisclosed cash. Thereafter, the penalty proceedings under Section 271(1)(c) Thereafter, two notices under Section 274 r.w.s. 271 dated 31.12.2010 and 24.01.2014 of the Income Tax Act were issued. In response to the said notices, the assessee submitted his explanation supported by relevant evidence. The explanation of the assessee was rejected by stating that the CIT(A) confirmed the addition thereby holding that the assessee has concealed the particulars of its income to the tune of Rs. 4,55,814/- and penalty of Rs. 1,43,581/- was imposed.

4. Being aggrieved by the penalty order, the assessee filed appeal before CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the quantum appeal before the Tribunal has deleted the said additions upon which the penalty has been levied.

6. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The additions made in respect of A.Y. 2003-04 has been deleted by the Tribunal vide order dated 29.03.2019 in ITA Nos. 2707, 2709/Del/2013 and CO Nos. 201, 202/Del/2014 for A.Y. 2003-04 and 2004-05. Since the quantum appeal before the Tribunal has deleted the said additions upon which the penalty has been levied, the addition itself does not survive. The penalty under Section 271(1)(c) of the Act upon such addition becomes infructuous. Hence appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on this 24th Day of FEBRUARY, 2021.

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

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 24/02/2021

*R. Naheed **

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

