

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'SMC-1', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5978/Del/2019  
(Assessment Year : 2012-13)

Green Valley Infracity Pvt. Ltd., C/o. Nitesh Singh, C-190, Sector-49, Noida-201301  PAN : AAFCP 8389 P	Vs.	ITO Ward-1(4), Noida
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Sunil Kumar Tyagi, C.A.
Revenue by	--None--

Date of hearing:	03/06/2021
Date of Pronouncement:	08/06/2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 29.04.2019 of the Commissioner of Income Tax (Appeals)-I, Noida relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a company which is stated to be engaged as Real Estate Developers. Assessee filed its return of income for A.Y. 2012-13 on 31.03.2014 declaring total income at Rs. Nil. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 27.03.2015 and the total income was determined at Rs.6,00,200/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) vide order dated 27.09.2016 (in Appeal No.125/2015-16, Noida) enhanced the income of the assessee to Rs.33,35,52,203/- (enhancing by Rs.4,94,001/- u/s 69C of the Act, by Rs.12,75,00,000/- u/s 68 of the Act and by Rs.20,49,08,002/- u/s 69 of the Act). Aggrieved by the order of CIT(A), assessee carried the matter before the Tribunal. Tribunal vide order dated 31.05.2018 (ITA No.6272/Del/2016) set aside the issues to CIT(A) and directed him to decide the issue afresh as per the directions contained therein. Consequent to the directions of ITAT, CIT(A) vide order dated 29.10.2018 once again determined the total income at Rs.33,35,52,203/-. On the aforesaid enhancement of income, CIT(A) vide order dated 29.04.2019 passed u/s 271(1)(c) of the Act levied the penalty @ 100% of tax sought to be evaded on the income of Rs.33,24,08,002/-. Aggrieved by the penalty order passed by CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“That on the Facts and in the circumstances of the case and in law, “The Learned Commissioner of Income tax (Appeals) - I, Noida [“Ld. CIT(A)”] erred in law and facts by sustaining the penalty imposed on the appellant vide order dated 29TH April 2019 passed by invoking section 275(1)(c) of the Income tax Act, 1961*

*(“the Act”) for Assessment year 2012-13 without appreciating the facts that the appeal against the penalty order was pending with Honorable IT AT (Delhi), therefore impugned order is void ab initio in the eyes of law and need to be struck down.*

2. *That on the facts and in the circumstances of the case and in law, the impugned penalty order passed by the Ld. CIT(A) is null and void and have no legal force to survive because the same is passed without any specific and definite allegation in notice u/s 274 as to under which limb of section 271(1)(c) the same is warranted viz for alleged concealment of income or for furnishing inaccurate particulars of income and therefore the impugned order so passed being in gross violation of specific provision of law is liable to be quashed as per settled law on the issue.*
3. *It is contended that the order passed by Commissioner of Income Tax (Appeals) is void ab-initio as the same has been passed without considering the submission submitted with CIT(A) during the hearing dated 25<sup>th</sup> February 2019 and 26<sup>th</sup> February 2019.*
4. *That on the facts and in circumstances if the case and in law, the impugned penalty order passed by the Ld. CIT(A) u/s 271(1)(c) is unlawful, void ab initio and untenable, because the same is passed without recording any satisfaction by him while passing the said order, which is gross violation of specific provision of section 271(1)(c) as well as against the guidelines issued by the CBDT, which is binding on the led. CIT(A) and therefore the impugned penalty is liable to be quashed.*
5. *That the impugned penalty is unjustified, unwarranted, unlawful and untenable because the assessee has neither concealed any income nor had furnished any inaccurate particulars of income and appellant hereby categorically denies all the allegations in this regard and has not committed any default nor caused any lapses so as to warrant the impugned penalty and the same therefore liable to be quashed.*
6. *The above grounds of appeal are independent and without prejudice to one another.*
7. *The appellant reserve its right to add, amend, modify, supplement, delete alter, not to press or withdraw any ground of appeal at any time during the course of appellate proceedings.”*

4. Before me, Learned AR submitted that though the assessee has raised several ground but the solitary issue is with respect to the levy of penalty u/s 271(1)(c) of the Act.

5. On the date of hearing, an application for adjournment was moved by Revenue seeking an adjournment to which Learned AR submitted that the issue involved is with respect to levy of penalty u/s 271(1)(c) of the Act. He further submitted that the penalty is not leviable as the enhancement order of CIT(A) which is the basis for levy of impugned penalty has been adjudicated in favour of the assessee and the Hon'ble ITAT has held the enhancement by CIT(A) to be invalid and *void-ab-initio*. Considering the aforesaid facts and the issue raised in the present appeal being a settled issue, I reject the adjournment application moved by Revenue and proceed to hear the appeal.

6. Before me, Learned AR submitted that assessment in this case was completed by AO u/s 143(3) vide order dated 27.03.2015 and computed the total income at Rs.6,00,200/-. When the matter was carried before CIT(A), CIT(A) vide order dated 27.09.2016 the income enhanced at Rs.33,35,52,203/- by making various arbitrary additions. Aggrieved by the enhancement, assessee preferred appeal before the Hon'ble ITAT. Hon'ble ITAT vide order dated 31.05.2018 restored the matter back to CIT(A) with certain directions. Pursuant to the directions of ITAT, CIT(A) in the order passed on 29.10.2018 again confirmed the additions made in the first round of appeal before him. He submitted that on the aforesaid additions made by

CIT(A), CIT(A) also levied the penalty u/s 271(1)(c) of the Act vide order dated 29.04.2019. He submitted that against the action of CIT(A) in enhancing the income by order dated 29.10.2018, assessee had filed the appeal before the Delhi Tribunal and the Hon'ble Delhi Tribunal vide order dated 02.03.2020 in ITA No.2110/Del/2019 for A.Y. 2012-13 adjudicated the appeal in favour of the assessee. He submitted that the Hon'ble ITAT after detailed examination of the facts and documents quashed the enhancement notice issued by Learned CIT(A) and even on the merits, the Hon'ble ITAT held the enhancement made by the CIT(A) to be not tenable and accordingly cancelled the impugned order dated 29.10.2018. He pointed the relevant findings in the order. He therefore submitted that once the enhancement order passed by CIT(A) itself has been set aside the quantum additions does not survive and therefore penalty u/s 271(1)(c) of the Act on such additions also does not survive. He placed on record the order of ITAT whereby the enhancement was set aside. He therefore submitted that penalty levied be deleted.

7. I have heard the Learned AR and perused the material on record. The issue in the present ground is with respect to levy of penalty u/s 271(1)(c) of the Act.

8. I find that CIT(A) vide order passed u/s 250 of the Act dated 29.10.2018 had determined the total income at Rs.33,35,52,203/- by enhancing the income of the assessee from Rs.6,00,200/-. On the aforesaid enhanced income, CIT(A) had levied the penalty u/s 271(1)(c) of the Act. I find that against the

enhancement made by CIT(A), assessee had carried the matter before the Tribunal. The Co-ordinate Bench of Tribunal vide order dated 02.03.2020 passed in ITA No.2110/Del/2019 had held the enhancement made by CIT(A) to be not tenable and therefore cancelled the order of enhancement passed by CIT(A) dated 29.10.2018. Thus the enhancement to income made by CIT(A) was annulled by ITAT. Since the impugned penalty levied u/s 271(1)(c) was on the enhancement made by CIT(A) and since the enhancement of income itself has been deleted by the Co-ordinate Bench of Tribunal, I am of the view that the penalty order passed by CIT(A) does not survive. I therefore direct the deletion of penalty levied by CIT(A) and **thus the grounds of assessee are allowed.**

9. **In the result, appeal of the assessee is allowed.**

**Order pronounced in the open court on 08.06.2021**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:- 08.06.2021*

*PY\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI