

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3005/Del./2018
(Assessment Year : 2006-07)**

**ITA No.3006/Del./2018
(Assessment Year : 2007-08)**

ACIT, Central Circle 26,
New Delhi.

vs. Shri Anurag Dalmia,
2nd Floor, Indraprakash Building,
21, Barakhamba Road,
New Delhi.

(PAN : AADPD9439P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V.K. Bindal, CA
Ms. Rinki Sharma, CA

REVENUE BY : Shri Satpal Gulati, CIT DR

Date of Hearing : 04.08.2021

Date of Order : 04.08.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Central Circle 26, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned orders both dated 20.02.2018 passed by the Commissioner of Income-tax (Appeals)-29, New Delhi dismissing the penalty orders both dated 30.06.2015 passed under section

271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') qua the assessment years 2006-07 & 2007-08 on the identical grounds, except the difference of amount, inter alia that:-

“1. That on the facts and in the circumstances of the case the Ld. CIT (A) has erred in law and on facts in deleting the penalty (Rs.9,41,33,837/- & Rs.4,90,58,258/- for AYs 2006-07 & 2007-08) on the concealment of income (Rs.27,96,60,833/- & Rs.14,17,50,411/- for AYs 2006-07 & 2007-08) (Rs.27,91,72,017/- & Rs.14,17,50,411/- for AYs 2006-07 & 2007-08 being the income from undisclosed foreign bank account) and Rs.4,88,816/- & Rs.25,81,034/- for AYs 2006-07 & 2007-08 being the interest income earned form undisclosed foreign bank account) on account of undisclosed investment in foreign bank account made u/s 69 of the Income Tax Act.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the penalty disregarding the fact that the assessee has deliberately concealed interest income of Rs.4,88,816/- in HSBC Geneva.

3. That the grounds of appeal are without prejudice to each other.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessments completed under section 153A/143(3) of the Act, penalty proceedings were initiated u/s 271(1)(c) of the Act for concealing the particulars of income. Declining the contentions raised by the assessee, AO proceeded to levy the penalty

of Rs.9,41,33,837/- & Rs.4,90,58,258/- for AYs 2006-07 & 2007-08 respectively @ 100% of the tax sought to be evaded.

3. Assessee carried the matter by way of appeals before the Id. CIT (A) who has deleted the penalties by allowing the appeals on the ground that the Tribunal has deleted the quantum additions. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeals.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, it is brought to our notice by the Id. AR for the assessee that additions made in the quantum proceedings have since been deleted by the Tribunal in *assessee's own case in ITA Nos.5395 & 5396/Del/2017 vide order dated 15.02.2018* and as such, penalty levied is not sustainable and brought on record the copy of the **order of the Tribunal dated 15.02.2018** (supra).

6. Undisputedly, coordinate Bench of the Tribunal vide order **dated 15.02.2018** (supra) deleted the additions. In these circumstances, the penalty levied by the AO is not sustainable in view of the law laid down by the Hon'ble Apex Court in case cited as *K.C. Builders & Anr vs. ACIT – 265 ITR 562 (SC)* because “*when the addition made in the assessment order on the basis of which penalty for concealment is levied*

have been deleted there remains no basis at all for levying the penalty for concealment and in such case, no penalty can survive and the penalty is liable to be cancelled.” So, in view of the matter, finding no illegality or perversity in the impugned orders passed by the Id. CIT (A), the appeals filed by the Revenue are hereby dismissed.

Order pronounced in open court on this 4th day of August, 2021.

**SD/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 4th day of August, 2021/ TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-29, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**
