

**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.3347/Del./2018  
(Assessment Year : 2010-11)**

M/s. Anika International Private Ltd., vs. DCIT, Circle 2 (2),  
F-402, 4<sup>th</sup> Floor, Ras Villas Mall, New Delhi.  
Plot No.D – 1, District Centre,  
New Delhi – 110 017.

**(PAN : AABCA5751F)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Abhishek Mathur, CA  
REVENUE BY : Shri Prakash Dubey, Senior DR**

Date of Hearing : 04.08.2021  
Date of Order : 04.08.2021

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Anika International Private Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 05.03.2018 passed by the Commissioner of Income-tax (Appeals)-1, New Delhi confirming the penalty order dated 28.03.2015 passed under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2010-11 on the grounds inter alia that :-

**“1. The Learned Assessing Officer has erred in imposing a penalty amounting to Rs.23,49,750/- u/s 271(1)(c) of Income Tax Act, 1961 on account of furnishing inaccurate particulars.”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment completed under section 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.23,49,750/- @ 100% of the tax sought to be evaded.

3. Assessee carried the matter by way of appeal before the Id. CIT (A) who has confirmed the penalty by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

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 No.2579/Del/2014 & 2081/Del/2014 for AY 2010-11 vide order dated 16.06.2017* and as such, penalty levied is not sustainable and brought on record the copy of the **order of the Tribunal dated 16.06.2017** (supra).

6. Undisputedly, coordinate Bench of the Tribunal vide order **dated 16.06.2017** (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, the penalty order passed by the AO and confirmed by the Id. CIT (A) is set aside and the appeal filed by the assessee is hereby allowed.

**Order pronounced in open court on this 4<sup>th</sup> day of August, 2021 after the conclusion of the virtual hearing.**

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

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

**Dated the 4<sup>th</sup> day of August, 2021  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**