

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6233/Del./2017
(Assessment Year : 2009-10)**

ACIT, Central Circle 18,
New Delhi.

vs. M/s. Victory Apartments Pvt. Ltd.,
208, Gupta Tower,
Azadpur Commercial Complex,
Delhi – 110 033.

(PAN : AACCV2794F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Kirti Sankratyayan, Senior DR

Date of Hearing : 06.09.2021

Date of Order : 14.09.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Central Circle 18(1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 24.07.2017 passed by the Commissioner of Income-tax (Appeals)-27, New Delhi qua the assessment year 2009-10 confirming the penalty levied under

section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act')

on the grounds inter alia that:-

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs.1,06,72,860/- on the ground that the additions made by the A.O. have already been deleted by the Hon'ble ITAT in quantum appeal, without appreciating the fact that the department has challenged that order before the Hon'ble High Court.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs.1,06,72,860/- without appreciating the fact that in view of the departments appeal before the High Court, the order of the Hon'ble ITAT has yet not attained finality.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 143(3) read with section 153C of the Act making addition of Rs.3,14,00,000/- as unaccounted income u/s 68 of the Act, penalty proceedings were initiated u/s 271(1)(c) of the Act. Declining the contentions raised by the assessee that in order to initiate the proceedings u/s 153C, the AO has failed to fulfill the necessary conditions laid down under the Act and as such, very initiation of proceedings u/s 153C of the Act are not proper and as such bad in law, AO proceeded to levy the penalty to the tune of Rs.1,06,72,860/- @ 100% of the tax sought to be evaded.

3. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has deleted the penalty by allowing the appeal.

Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

5. We have heard the Id. Departmental Representative for the Revenue/appellant 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.

6. Ld. DR for the Revenue relied upon the order passed by the AO, but failed to rebut the findings returned by the Id. CIT(A) that when quantum has been deleted no penalty is sustainable u/s 271(1)(c) of the Act.

7. Undisputedly, **coordinate Bench of the Tribunal vide order dt. 24.03.2017 in ITA No.6233/Del/2014 for AY 2009-10** deleted the addition made by the AO by quashing the assumption of jurisdiction u/s 153C of the Act. It is also not in dispute that the **order dated 24.03.2017** (supra) passed by the Tribunal has been accepted by the Revenue.

8. In the light of the aforesaid undisputed facts, Id. CIT (A) deleted the penalty levied u/s 271(1)(c) of the Act on the ground

that when addition has been deleted penalty cannot be levied. So we find no illegality or infirmity in the findings returned by the Id. CIT(A) as the coordinate Bench of the Tribunal has deleted the addition made by the AO by quashing the proceedings u/s 153C, penalty levied u/s 271(1)(c) of the Act is not sustainable being consequential in nature, hence appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 14th day of September, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

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

**Dated the 14th day of September, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-27, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**