

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

**BEFORE SHRI AMIT, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No. 4483/Del/2019  
(Assessment Year: 2007-08)**

Vikas Strips Ltd., Delhi.	Vs.	ACIT, Circle – 26(2), New Delhi.
<b>PAN No:</b> AABCV7134J		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Kapil Goel, Adv.  
**Revenue by** : Shri Avikal Manu, Sr. DR

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

**(A)** This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi, ["Ld. CIT(A)", for short], dated 25.11.2016 for Assessment Year 2007-08, on the following grounds:

**"Invalid Penalty Orders u/s 271(1)(c): jurisdictional challenge**

1. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the penalty order passed by Ld AO u/s 271(1)(c) on basis of invalid assessment order passed u/s 147/148 of the Act as evident from cursory look to page 2 of assessment order that notice u/s 143(2) was issued on 11/08/2014 where as vide letter*

**dated 21/08/2014 valid return u/s 148 was submitted on basis of which no valid notice u/s 143(2) is issued prior to completion of assessment, ergo assessment framed is invalid and penalty levied and confirmed on basis of invalid assessment deserves to be quashed;**

2. *That on the facts and in the circumstances of the case and in law Id CIT-A erred in sustaining the penalty order passed by Ld AO u/s 271(1)(c) on basis of invalid assessment order passed u/s 147/148 of the Act as jurisdiction u/s 148 was not validly assumed and there are series of jurisdictional errors in reopening the case u/s 148 of the Act as evident from reasons recorded u/s 148 which are not adequate to form valid reasons to believe u/s 148 of the Act (refer page 1 of impugned penalty order), **ergo assessment framed is invalid and penalty levied and confirmed on basis of invalid assessment deserves to be quashed;***
3. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the penalty order passed by Ld AO u/s 271 (1)(c) as in assessment order passed dated 17/03/2015 same is delightfully vague as to requisite satisfaction of Ld AO to validly initiate penalty proceedings u/s 271 (1B) of the Act and said assessment order also does not disclose under which specific limb penalty charge is made by Ld AO, accordingly penalty order passed by Ld AO and order of Ld CIT-A may please be quashed;*
4. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the penalty order passed by Ld AO u/s 271(1)(c) as Ld AO has levied penalty without any application of mind in routine and casual manner which is confirmed in arbitrary manner by Ld CIT-A , accordingly penalty order passed by Ld AO and order of Ld CIT-A may please be quashed;*

**Merits of penalty order u/s 271(1)(c) Rs. 309,000/-**

5. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the penalty order passed by Ld AO u/s 271 (1)(c) without appreciating assessee 's contention that:*
  - i) *Firstly addition made by Ld AO in quantum proceedings u/s 68 of the Act is itself incorrect and made in grave violation to principle of natural justice **as no case specific incriminating material or statement of any person is brought on records at any stage so as to draw adverse inference u/s 68 in wake of inundated documentary evidence which have remained totally uncontroverted and simply on basis of assumption and presumption , addition u/s 68 was made , which can never give rise to valid penalty u/s 271(1)(c) of the Act;***
  - ii) *Secondly there is no animus and conscious concealment (intentional wrong doing) on part of assessee as evident from fact that assessee has given a bonafide explanation in support of extant share capital obtained which is based on valid documentary evidence ,so penalty levied u/s 271(1)(c) is patently wrong;*

*iii) Thirdly bonafide conduct of assessee has been above board in extant case as no material fact is ever suppressed/hided or wrongly mentioned in return filed/assessment proceedings, so as to attract lethal consequences of section 271(1)(c) of the Act;*

*iv) Fourthly, on merits of the claim no where it is appreciated by Ld AO/CIT-A that extant issue of addition u/s 68 is already decided in favor of assessee by various higher court rulings so penalty u/s 271 (1)(c) cant be levied when addition itself is seriously questionable;*

*v) Fifthly , penalty u/s 271(1)(c) cant be levied where facts are not validly disproved by Ld AO and case only falls in category of facts not proved, as is the case here;*

*vi) Lastly, on holistic consideration of entire conspectus of the case penalty u/s 271(1)(c) is wrongly levied here as no case is made out against assessee to be visited with draconian consequences of penalty u/s 271(1)(c) of the Act;*

6. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the penalty order passed by Ld AO u/s 271(1)(c) without appreciating any of the contention of assessee, ergo, penalty order passed by Ld AO and order of Ld CIT-A may please be quashed;*

*That the appellant craves leave to add / alter any / all grounds of appeal before or at the time of hearing of the appeal."*

**(B)** The Assessment order dated 17.03.2015 was passed U/s 147/148 of the Income Tax Act, 1961 ("I.T. Act", for short) wherein total taxable income was assessed Rs. 18,80,075/- by Assessing Officer ("AO", for short). Thereafter, penalty U/s 271(1)(c) read with Section 274 of the Act was levied by the AO vide order dated 29.06.2018, amounting to Rs. 3,09,000/- which was @100% tax sought to be evaded. Vide impugned order dated 25.11.2016 of Ld. CIT(A), this penalty was confirmed. The present appeal before Income Tax Appellate Tribunal ("ITAT", for short) has been filed by the Assessee against the aforesaid order dated 25.11.2016 wherein the Ld. CIT(A) confirmed the penalty.

At the time of hearing before us, the Ld. Counsel for the assessee submitted that vide order dated 10.09.2020, Co-ordinate Bench of ITAT, Delhi has already cancelled the assessment order; and has consequently deleted the quantum additions in ITA No.-447/Del/2017 for Assessment Year 2007-08. The Ld. Counsel of the assessee submitted that the penalty levied U/s 271(1)(c) of I.T. Act should be deleted too, as the corresponding quantum additions already stand deleted by aforesaid order dated 10.09.2020 of ITAT. The Ld. Sr. Departmental Representative ("Ld. Sr. DR", for short) appearing for Revenue did not dispute the fact claimed by the Ld. AR of the assessee that the quantum addition has already been deleted by ITAT. However, he relied on the orders of the authorities below.

**(B.1)** After hearing both sides, we are of the view that penalty U/s 271(1)(c) of I.T Act of Rs. 3,09,000 /- levied by AO has no legs to stand at present, when the corresponding Assessment Order has already been cancelled by Co-ordinate Bench of ITAT Delhi; and as a result the additions made by the AO stand already deleted by ITAT, vide its aforesaid order dated 10.09.2020. When the Assessment Order has been cancelled, and consequently, the additions made therein do not survive, the penalty levied U/s 271(1)(C) of I.T. Act on the corresponding quantum additions also cannot survive. We take support from judicial precedent in the case of K.C. Builders vs. ACIT 135 Taxman 461 (SC), in which the Hon'ble Apex Court held that where the additions made in the Assessment Order, on the basis of which penalty for concealment was levied, are deleted, by ITAT or otherwise, the penalty cannot stand by itself and is liable to be cancelled. In such a situation, there remains no basis at all at present for levying the penalty U/s 271(1)(c) of

I.T. Act , and therefore, in such a case, no such penalty can remain presently. In view of the foregoing, the penalty levied U/s 271(1)(c) of I.T. Act (in respect of quantum additions already stand deleted by ITAT in aforesaid order dated. 10.09.2020 in ITA No. 447/Del/2017) is hereby cancelled. Accordingly, appeal filed by the assessee is allowed.

This order was orally pronounced on 21<sup>st</sup> September, 2021 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 21/09/2021 .

Sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 21/09/21  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	