

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI G.S.PANNU, PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1938/Del/2017
[Assessment Year : 2005-06]**

M/s. Guru Nanak Infotech Pvt.Ltd., C/o-O.P.Bagla & Co., 8/12, Kalka Ji Extension, New Delhi-110019. PAN-AACCG4537H	vs	DCIT, Circle-10(2), New Delhi
APPELLANT		RESPONDENT
Appellant by	Shri Mukul Bagla, CA	
Respondent by	Shri Kumar Padmapani Bora, Sr.DR	
Date of Hearing	23.11.2021	
Date of Pronouncement	23.11.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2005-06 is directed against the order of Ld. CIT(A)-15, Delhi dated 15.07.2016. The assessee has raised following grounds of appeal:-

1. *"The order passed by the Ld. CIT(A) is bad in law, wrong on facts and against the principles of natural justice.*
- 2.a) *That on the facts and in the circumstances of the case the Ld CIT(A) has erred in confirming the penalty of Rs. 60,01,170/- levied by Assessing Officer u/s 271 (1)(c) of Income Tax Act, 1961 without considering the request of the appellant company that the quantum appeal was pending for disposal before Hon'ble CIT(A).*
- b) *The Ld. CIT(A) has failed to appreciate that the appellant company has not concealed the income or has furnished*

inaccurate particulars of income & thus provisions of section 271 (1)(c) are not attracted.

- c) *The Ld. CIT(A) has failed to appreciate that there is no concealment of income of Rs. 1,64,00,000/- towards share capital and other credits in the bank account.*
- d) *The Ld. CIT(A) has erred in concluding that the notices were issued to the Authorised Representative and there was no compliance, however no such notice dated 05/07/2016 for fixing the date of hearing on 14/07/2016 was received by the Authorised Representative and thus ex-party appeal order is bad in law.*

The appellant craves leave to add, alter, amend, modify or forego any of the grounds of appeal before or at the time of hearing.”

2. At the outset, Ld. Counsel for the assessee submitted that in quantum proceedings, the addition has been deleted. Therefore, the penalty of Rs.60,01,170/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (“the Act”) would not survive.

3. Ld. Sr. DR supported the orders of the authorities below. However, he could not controvert the submissions of the Ld. Counsel for the assessee that in quantum proceedings, the addition has been deleted.

4. We have heard the rival contentions of both the parties and perused the material available on record. We find that ld.CIT(A) has deleted the addition by observing as under:-

“After considering the entire facts the confirmations, the bank statements and other evidences, the credit of Rs.74,00,000/- on

23.03.2005 stands explained. Therefore, the addition of Rs.74,00,000/- made on this account is deleted. This ground of appeal is allowed.

The appellant gets total relief of Rs.1,64,00,000/- duly added u/s 68 of the Income Tax Act.”

5. We find that the Co-ordinate Bench of the Tribunal in ITA No.2905/Del/2017 pertaining to Assessment Year 2005-06 dismissed the appeal of the Revenue as preferred against the order of Ld.CIT(A) in quantum proceedings by observing as under:-

3. *“We have heard the parties on the issue in controversy and perused the material on record. Perusal of CBDT Circular (supra) shows that monetary limit for filing the appeal by the Department before the Tribunal, Hon'ble High Court and Hon'ble Supreme Court has been revised.*

4. *In view of the CBDT Circular No.17/2019 dated 8th August, 2019 having retrospective effect as coordinate Bench of the Tribunal in case of Dinesh Madhavlal Patel [TS-469-ITAT2019(Ahd)] 2019-TIOL-1556-ITAT-AHM dated 14th August, 2019 has already decided the issue as to the applicability of the captioned circular to the pending appeals in affirmative and what has been discussed above, we are of the considered view that the aforesaid appeal is not maintainable because of low tax effect i.e. less than Rs.50,00,000/- hence, the aforesaid appeals filed by the Revenue is hereby dismissed having been become infructuous. However, in case, the present appeal is found to be maintainable at any stage for any technical reasons, the Department shall be at liberty to seek recall of this order under relevant provisions of law.”*

6. Though the appeal of the Revenue has been dismissed on account of low tax effect, the implication is that the order of Ld.CIT(A) deleting the quantum addition has become final. Thus, the quantum addition being absent, the impugned penalty imposed u/s 271(1)(c) of the Act on such an addition would not survive. We hold accordingly. The Assessing Officer is hereby, directed to delete the penalty.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 23rd November, 2021.

Sd/-

(G.S.PANNU)
PRESIDENT

Amit Kumar

Copy forwarded to:

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

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI