

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. K. NARASIMHA CHARY, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.230/Del/2019
(Assessment Year : 2012-13)

ACIT, Central Circle-18 New Delhi PAN : AABCI0760K	Vs.	BMA Capfin Ltd. (Merged with M/s. I.P.India Pvt. Ltd., Now known as M/s. Adhunik Technology Pvt. Ltd.) 209, Satyam Tower, Commercial Complex, Paschim Vihar, New Delhi-110063
(APPELLANT)		(RESPONDENT)

Assessee by	None
Revenue by	Shri Satpal Gulati, CIT- DR

Date of hearing:	02.12.2021
Date of Pronouncement:	09.12.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 09.11.2018 of the Commissioner of Income Tax (Appeals)-27, New Delhi relating to Assessment Year 2012-13.

2. Assessee is a company who filed its return of income for A.Y. 2012-13 on 04.11.2012. The case was selected for scrutiny and thereafter, notice u/s 143(2) and 142(1) were issued and served upon the assessee. AO has noted that there was no compliance with the notices issued by the department. AO thereafter passed order u/s 144 dated 18.03.2015 & determined the total income at Rs. 10,54,52,000/- inter alia by making addition of Rs. 10,54,52,000/-, being unexplained sundry creditors. On the aforesaid addition made, AO vide penalty order passed u/s 271(1)(c) dated 30.03.2017 levied penalty of Rs. 3,42,13,900/-.

3. Aggrieved by the penalty order passed by AO, assessee carried the matter before Ld. CIT(A) who vide order dated 09.11.2018 in appeal no. 58/17-18 deleted the penalty. Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal and has raised the following grounds :

“1. On the facts and in the circumstances of the case, whether the Ld. CIT(A) has erred in deleting the penalty of Rs. 3,42,13,900/- 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. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

4. On the date of hearing, none appeared on behalf of the assessee, though, the notice of hearing was issued to the assessee. In view of the aforesaid facts and considering that the issue raised by the Revenue in its appeal is a covered issue, we proceed to dispose of the appeal *ex parte* qua the assessee after hearing ld. DR.

5. Before us, ld. DR took us through the findings of Ld. CIT(A). He submitted that considering the findings of Ld. CIT(A) appropriate order be passed.

6. We have heard the Ld. DR and perused the material on record. We find that the Ld. CIT(A) while deleting the penalty has noted that against the quantum addition of unexplained creditors that was made by AO and confirmed by Ld. CIT(A), Assessee had filed an appeal before the Hon'ble Tribunal and the Hon'ble Tribunal vide order dated 25.05.2017 had quashed the assessment order Ld. CIT(A), therefore, held that when the substantive assessment order has been quashed by Hon'ble ITAT, the penalty order emanating from such order does not survive. Before us, no fallacy in the findings of Ld. CIT(A) has been pointed out by Revenue nor has Revenue placed any material on record to demonstrate that the quantum order passed by the Tribunal based on which the impugned penalty has been levied has been set aside/ over ruled / stayed by higher judicial forum.

7. In view of the aforesaid facts, we find no reason of interfere with the order of Ld. CIT(A) and thus, **the ground of Revenue dismissed.**

8. **In the result, appeal of the revenue is dismissed.**

Order pronounced in the open court on 09.12.2021, immediately after conclusion of the hearing of the matter in virtual mode.

Sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

*Date:- 09.12.2021
*Binita**

Copy forwarded to:

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

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI