

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No.3907/Del/2019
Assessment Year: 2008-09

MDLR Estates (P) Ltd., Flat No. 4, R.R. Apartment, 3-4 Manglapuri, Mehrauli New Delhi-1100 30	Vs.	DCIT, Central Circle-14, New Delhi.
PAN :AAECM5222D		
(Appellant)		(Respondent)

ITA No.3908/Del/2019
Assessment Year: 2008-09

MDLR Builders (P) Ltd., Flat No. 4, R.R. Apartment, 3-4 Manglapuri, Mehrauli New Delhi-1100 30	Vs.	DCIT, Central Circle-14, New Delhi.
PAN :AAECM5223C		
(Appellant)		(Respondent)

Appellants by	S/Shri Gautam Jain & Lalit Mohan, Adv.
Respondent by	Shri T. Kipgen, CIT (DR)

Date of hearing	16.03.2022
Date of pronouncement	30.03.2022

ORDER

PER BENCH:

These two appeals, filed by the two different assesseees, are directed against the orders of learned Commissioner of Income-

Tax(Appeals)-26, New Delhi dated 28.02.2019 for assessment year 2008-09.

2. Before us, at the outset, learned authorized representative submitted that though the assesseees are different but they belong to same group and the penalty is of identical amount (Rs.13.04 crores) and on similar facts. He, therefore, submitted that he has common submissions to make.

3. Learned Departmental Representative did not controvert the aforesaid submissions of learned authorized representative. We, therefore, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order but however proceed with the facts in ITA No.3907/Del/2019.

4. In this appeal, assessee has challenged the levy of penalty imposed upon the assessee under Section 271(1)(c) of the Income-Tax Act, 1961.

5. Before us, learned authorized representative submitted that learned Commissioner of Income-Tax(Appeals) had enhanced the income to the extent of Rs.13,04,94,600 on account of losses on share of group entity holding it to be non-genuine losses. On the aforesaid enhancement of income, learned Commissioner of

Income-Tax(Appeals) vide penalty order dated 28.02.2019, levied penalty of Rs.6,04,84,247 under Section 271(1)(c) of the Act.

6. Aggrieved by the order of learned Commissioner of Income-Tax(Appeals) on enhancement, assessee carried the matter before the Tribunal. The Tribunal vide its consolidated order in ITA No.8214 & 8215/Del/2018 dated 11.06.2019 had restored the issue back to the file of the Assessing Officer with the directions to him to decide the issue afresh. Consequent to the directions of Tribunal, Assessing Officer vide order dated 27.09.2021 passed under Section 254 read with section 143(3) of the Income-Tax Act, 1961 determined the total income at Rs. Nil.

7. Before us, learned Authorized Representative submitted that since the enhancement of income as proposed by learned Commissioner of Income-Tax(Appeals) does not survive as is evident from the aforesaid order of Assessing Officer dated 27.09.2021 passed under Section 254 read with section 143(2) of the Act, the penalty on such enhanced income also does not survive and, therefore, penalty needs to be deleted.

7. Learned Departmental Representative did not controvert the aforesaid submissions made by learned authorized representative.

8. We have considered the rival submissions and perused the material available on record. The issue in the present ground is with respect to levy of penalty under Section 271(1)(c) of the Income-Tax Act, 1961 on the enhancement of income made by learned Commissioner of Income-Tax(Appeals). We find that learned Commissioner of Income-Tax(Appeals) had enhanced the income to the tune of Rs.13,04,94,600/- & on such enhanced income, penalty of Rs.6,04,84,247 was levied under Section 271(1)(c) of the Act. Aggrieved by the order of enhancement of income, assessee had carried the matter before the Tribunal. The co-ordinate Bench of Tribunal vide order dated 11.06.2019 had directed the Assessing Officer to decide the matter afresh. Consequent to the directions of co-ordinate Bench of the Tribunal, assessing officer had passed order under Section 254 read with section 143(3) of the Act vide order dated 28.09.2021 determined the total income at Rs.Nil, meaning thereby, that there was no enhancement of income that was proposed by learned Commissioner of Income-Tax(Appeals). In such a situation, when there is no enhancement of income, we are of the view that penalty under Section 271(1)(c) of the Act on such enhancement of income does not survive. We, therefore, direct its deletion, thus, **the ground of assessee is allowed.**

9. **Thus the appeal of Assessee is allowed.**

10. As far as the issue in ITA No. 3808/Del/2019 is concerned, before us, both the parties have admitted that the facts of the case are identical to that of ITA No.3807/Del/2019. We have hereinabove while deciding the appeal in ITA No.3807/Del/2019, have deleted the penalty. We, for similar reasons, hold that no penalty is leviable in the present case also. **Thus, the ground of assessee is allowed.**

11. **Thus the appeal of Assessee is allowed.**

12. In the result, both the appeals of Assessee are allowed.

Order pronounced in the open court on 30th March, 2022

Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 30th March, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	16.03.2022
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	16.03.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	16.03.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been singed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	30.03.2022
8.	Date on which the file goes to the Bench Clerk	30.03.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	