

**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.1090/Del/2019
Assessment Year: 2005-06

Vinman Estates (P) Ltd., Flat No. 4, RR Apartment, 3-4 Manglapuri, Mehrauli, New Delhi-1100 30	Vs.	DCIT, Central Circle-14, New Delhi.
PAN :AACCG2074P		
(Appellant)		(Respondent)

Appellant 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 ANIL CHATURVEDI, ACCOUNTANT MEMBER:

The present appeal filed by the Assessee is directed against the order of learned Commissioner of Income-Tax (Appeals)-XXVI, New Delhi dated 17.12.2018 in appeal No.10083/17-18 for assessment year 2005-06.

2. The facts of the case in brief as culled out from material on record are as under:-

'A search was conducted in the case of Assessee on 31.01.2008 & consequently assessment was framed under Section 144/153A of the Income-Tax Act, 1961 vide order dated 29.12.2009. Thereafter, consequent to the order passed under Section 264 of the Act, assessment was completed under Section 144 read with section 153A vide order dated 15.03.2013 & the total income was determined at Rs.5,58,90,151 as against the returned loss of Rs.34,400. Aggrieved by the order of Assessing Officer, Assessee carried the matter before learned Commissioner of Income-Tax(Appeals) who vide order dated 07.01.2016 deleted the addition to the extent at Rs.5,44,24,551 & upheld the addition of Rs. 8 lacs. On the aforesaid addition upheld by learned Commissioner of Income-Tax(Appeals), Assessing Officer vide penalty order dated 31.03.2017 passed under Section 271(1)(c) read with section 274 of the Act levied penalty of Rs.8,40,456 under Section 271(1)(c) of the Act.

Aggrieved by the penalty order of Assessing Officer, Assessee carried the matter before learned Commissioner of Income-Tax(Appeals), who vide order dated 17.12.2018 in appeal No.10083/17-18, upheld the penalty levied by Assessing

Officer. Aggrieved by the order of learned Commissioner of Income-Tax (Appeals), Assessee is now before us, challenging the levy of penalty under Section 271(1)(c) of the Act.’

3. Before us, learned AR pointed to the order passed under Section 271(1)(c) read with Section 274 of the Income-Tax Act, 1961 dated 31.03.2017 & pointed to the fact that learned Commissioner of Income-Tax(Appeals) had upheld the addition to the extent of Rs.8,00,000 and on the aforesaid addition, penalty of Rs.8,40,456 under Section 271(1)(c) was levied by the Assessing Officer. He submitted that against quantum addition that was upheld by the learned Commissioner of Income-Tax(Appeals), assessee had carried the matter before the Tribunal and the Tribunal vide paragraph 48 of the consolidated order passed on 27th April 2020 in ITA No.1589/Del/2016, had deleted the addition. He pointed to the relevant portion of the order at page 133 of the paper book. He, therefore, submitted that since the addition itself has been deleted, penalty on such addition does not survive and, therefore, the same be deleted.

3. Learned Departmental Representative did not controvert the aforesaid submissions made by the learned authorized representative but however supported the order of lower authorities.

4. We have considered the rival submissions and perused the material available on record. The issue in the present appeal is with respect to the levy of penalty under Section 271(1)(c) of the Act. It is an undisputed fact that the penalty under Section 271(1)(c) was levied by Assessing Officer on the addition of Rs.8,00,000 that was upheld by learned Commissioner of Income-Tax(Appeals). It is also an undisputed fact that the addition that was upheld by learned Commissioner of Income-Tax(Appeals) was deleted by the co-ordinate Bench of the Tribunal vide order dated 27.04.2020. Since the quantum addition on which the impugned penalty has been levied itself has been deleted, we are of the view that the penalty on such addition does not survive. We, therefore, direct its deletion, thus, the grounds of assessee are allowed.

6. In the result, the appeal is 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

Asst. Registrar, ITAT, New Delhi