

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'C' : NEW DELHI)

(Through Video Conferencing)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND**

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.301 /Del/2019
(Assessment Year : 2011-12)

Late Smt. Harminder kaur L/H Sh. APS Matharoo A-1/118, Safdarjung Enclave New Delhi PAN : ANOPK6529P	Vs.	ITO, Ward-36(4), New Delhi
(APPELLANT)		(RESPONDENT)

Revenue by	Ms. Gunjan Jain, CA
Assessee by	Sh. Ratan Singh, Sr. DR

Date of hearing:	22.02.2022
Date of Pronouncement:	31.03.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the assessee against the order dated 30.10.2018 of the Id. First Appellate Authority CIT(Appeals)-12 (hereinafter referred as FAA also) u/s 250 of the Income Tax Act (hereinafter referred to as "the Act") whereby the penalty order u/s 271(1)(c) of the Act dated

08.06.2017 of the Ld. AO was upheld, while dismissing the appeal of the present assessee.

2. The brief facts are that assessee claimed exemption u/s 54F of the Act on the account of capital gain to the extent of Rs. 74,32,514/- arising out of sale of a property situated at Panchkula for sales consideration of Rs.1,58,85,000/-, being 1/3 share of the assessed in total sale consideration of 4,75,00,000/-. The Assessing officer disallowed the claim of exemption u/s 54F of the Act on the basis that the investment in the new property was made beyond the due date of filing of return of income u/s 139(1) of the Act and also that assessee had merely booked the flat which was yet to be completed to get the possession. Thus, while disallowing the exemption u/s 54 of the Act, the Ld. AO had ordered to initiate the proceedings u/s 271(1)(c) separately. Thereafter, penalty of Rs. 15,79,847/-, being the income sought to be evaded was imposed. The assessee had challenged the same and by the impugned order of 30.10.2018, the Ld. First Appellate Authority had dismissed the appeal and confirmed the penalty.

3. The assessee has preferred the present appeal primarily on the ground that the penalty was imposed on the basis of debatable issue and that the Ld. AO has not specified as to whether the penalty is levied for concealment of income or for furnishing inaccurate particulars thereof.

4. Ld. AR and the Sr. DR were heard and record has been perused.

5. The Ld. Counsel for assessee, without going on merits of grounds has submitted that the quantum appeal in the present case, bearing ITA no. 2656/Del/2017 for the assessment year 2011-12 has been allowed by the order dated 10.02.2021 of the ITAT Delhi Bench "C" while directing the

Assessing officer to allow the deduction claim u/s 54 of the Act, so the penalty order cannot be sustained. The copy of order dated 10.02.2021 has been placed on record.

6. This fact could not be controverted by the Ld. Sr. DR while he stood with the orders of Ld. AO and Ld. F.A.A.

7. The Bench is of firm view that the foundation of issuing show cause notice for penalty u/s 271(1)(c) of the Act, being crumbled by a verdict of this Tribunal, by deletion of additions, the penalty order alone cannot stand by its own against the assessee. Reliance in this regard can be placed on the judgement of Hon'ble Delhi High Court in the case of **Principal CIT vs. Fortune Technocomps P.Ltd. vide ITA 313/2016 dated 13th May, 2016** where it has held that once the assessment order of the AO in the quantum proceedings was altered by the Ld.CIT(A), in a significant way, the very basis of initiation of penalty proceedings was nonexistent. The Hon'ble Allahabad High Court in the cases of **Shadiram Balmukand [1972] 84 ITR 183** and **Dwarka Prasad Subhas Chandra [1974] 94 ITR 154** and the Hon'ble Gujarat High Court in the case of **Lakkdhir Lalji [1972] 85. ITR 77** have also held that when the original basis of initiation of the penalty proceeding is altered or modified by the appellate authority, the authority initiating the penalty proceedings has no jurisdiction thereafter to proceed on the basis of the findings of the appellate authority. The Hon'ble Supreme Court in the case of **K.C. Builders vs. ACIT 135 Taxman 461 (SC)**, has made it crystal clear 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.

7. Consequently, the appeal in hand succeeds and the same is allowed. The impugned orders of imposing penalty passed by Ld. AO and confirmed by Ld. FAA, are set aside.

Order pronounced and signed in open court on this 31st day of March, 2022.

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 31 .03.2022

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI