

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.2180/DEL/2019 & 2181/DEL/2019  
Assessment Years 2009-10 & 2008-09

Asst. Commissioner of Income Tax, Central Circle-18, New Delhi.	v.	M/s. Aerens Buildwell Ltd., G-56, Green Park Main, New Delhi.
TAN/PAN: AACCA3045N		
(Appellant)		(Respondent)

Appellant by:	Shri Vivek Bansal, Adv. Shri Mayank Banga, Adv.		
Respondent by:	Mrs. Suman Malik, Sr.D.R.		
Date of hearing:	31	03	2022
Date of pronouncement:	31	03	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeals have been filed by the Revenue against the orders of the Commissioner of Income Tax (Appeals)-XXVII, New Delhi ['CIT(A)' in short], of even date 24.12.2018 arising from the respective orders of the Assessing Officer (AO) whereby penalty under Sections 271(1)(c) of the Income Tax Act, 1961 (the Act) amounting to Rs.74,37,668/- (A.Y. 2008-09) and Rs.34,98,136/- (A.Y. 2009-10) were deleted by the CIT(A).

2. From the grounds of appeal raised by the Revenue itself, it is admitted position that the additions/disallowances made in the quantum assessments giving rise to the penalty in question in the respective appeals stood reversed by the Co-ordinate Bench of Tribunal in ITAs No.5037/Del/2016 and 5075/Del/2016 for

Assessment Years 2008-09 and 2009-10, respectively. Thus, in view of the fact that quantum additions/disallowances itself have been admittedly deleted, the very basis for imposition of penalty ceases to exist and does not survive any more. Hence, the conclusion drawn by the CIT(A) deleting the penalty cannot be disturbed.

3. The appeal moved by the Revenue on the ground that quantum appeal in favour of the assessee is subjected to challenge before the Jurisdictional High Court and thus not yet attained finality is devoid of any merit. As noticed, the Tribunal in the quantum proceedings has reversed the action of the Revenue. It is trite that penalty under Section 271(1)(c) is not automatically attracted merely because it is lawful to do so. The penalty is not ordinarily to be imposed unless assessee obliged in law, either acted deliberately in defiance of law or guilty of dishonest conduct or acted in conscious disregard of its obligation. The decision of the Tribunal in favour of the assessee implies absence of such possibilities. We thus decline to interfere with the order of the CIT(A).

3. In the result, both the appeals of the Revenue are dismissed.

**Order was pronounced in the open Court on 31/03/2022.**

Sd/-  
**[SAKTIJIT DEY]**  
**JUDICIAL MEMBER**

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**

*Prabhat*