

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

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

ITA No. 7057/Del/2017  
(Assessment Year : 2012-13)

ACIT Circle – 1(1) Gurgaon  <b>PAN : AAIFB 6995 K</b> <b>(APPELLANT)</b>	Vs.	M/s. Buildtec Constructions, O-11, 9A, Second Floor, Palam Vyapar Kendra, Palam Vihar, Gurgaon – 122 017  <b>(RESPONDENT)</b>
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Assessee by	-None-
Revenue by	Shri Zahid Parvez, Sr. D.R.

Date of hearing:	30.05.2022
Date of Pronouncement:	30.05.2022

**ORDER**

**PER ANIL CHATURVEDI, AM :**

The present appeal filed by the Revenue is directed against the order dated 26.09.2017 of the Commissioner of Income Tax (Appeals)-1, Gurgaon relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. The assessee is a partnership firm who filed its return of income for A.Y. 2012-13 on 23.09.2012 which was revised on

09.10.2012 declaring total income of Rs.2,09,29,607/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) r.w. Section 144 of the Act vide order dated 28.03.2015 after making addition of Rs.2,03,03,789/- on account of difference in receipts as per P&L account vis-à-vis 26AS and; (ii). disallowance of Rs.68,33,700/- on account of expenses claimed under the head “Direct Construction Cost” and “Indirect Expenses”. On the aforesaid additions made by AO, AO vide order dated 28.09.2015 levied penalty of Rs.81,41,247/- u/s 271(1)(c) of the Act.

4. Aggrieved by the penalty order passed by AO, assessee carried the matter before CIT(A). CIT(A) vide order dated 26.09.2017 in Appeal No.276/2015-16 granted partial relief to the assessee wherein he deleted the penalty levied on account of addition of Rs.2,03,03,789/- but upheld the penalty on the disallowance of Rs.68,33,700/-. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *“Ld. CIT(A) has erred in cancelling the penalty of Rs.62,73,870/- imposed u/s 271(1)(c) of the Act.*
2. *That the appellant craves for the permission to add, delete or amend grounds of appeal before or at the time of hearing.”*

5. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed on its behalf though the file reveals that the notice of hearing was served on the assessee. In such a situation, we proceed to dispose of the appeal *ex parte qua* the assessee and after hearing the Learned DR.

6. Before us, Learned DR supported the order of AO.

7. We have heard the Learned DR and perused the material available on record. In the present appeal, Revenue is aggrieved by the deletion of levy of penalty of Rs.62,73,870/- u/s 271(1)(c) of the Act on the addition of Rs.2,03,03,789/- that was made by AO. We find that CIT(A) while deleting the penalty at page 9 of his order has noted that the aforesaid addition made by the AO was deleted by CIT(A) and since the quantum addition has been deleted, the penalty does not survive. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A) nor has placed any material on record to demonstrate that the aforesaid addition of Rs.2,03,03,789/- which was deleted by CIT(A) has been set aside by the Tribunal. Considering the totality of the aforesaid fact, we find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

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

**Order pronounced in the open court on 30.05.2022**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

*Date:- 30.05.2022*

*PY\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI