

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

**(DELHI BENCH 'H' : NEW DELHI)**

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.4641/Del/2019  
(Assessment Year : 2009-10)

M/s. Ghaziabad Development Authority Vikas Path, Navyug Market, Ghaziabad PAN No. AAALG0072C	Vs.	Dy. Commissioner of Income Tax, Exemption Circle Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Deepesh Garg, Advocate
Revenue by	Ms. Anupama Singla, Sr. DR

Date of hearing:	07.06.2022
Date of Pronouncement:	13 <sup>th</sup> .06.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal is preferred by the assessee against order dated 28.02.2019 in appeal no. 612903561250418 for the assessment year 2009-10 passed by Commissioner of Income Tax (Appeals), Ghaziabad in regard to order dated 28.03.2018 u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') passed by DCIT, Exemption, Circle-Ghaziabad.

2. The facts in brief are vide assessment order u/s 143/263 of the Act, dated 20.03.2015 Ld. AO had observed that the assessee was engaged in

activity in the nature of trade, commerce or business and therefore an addition of Rs. 6 crores was made in the head of assessee in regard to a loan of Rs. 50 crores given to Hapur Development Authority for which no interest has been credited by the assessee. The Ld. AO applied normal rate of 12% to make this addition of Rs. 6 crores. Further considering the same to be the case of furnishing inaccurate particulars initiated penalty proceedings u/s 271(1)(c) of the Income Tax Act and penalty order was passed on 28.03.2018 which was upheld by the Ld. CIT(A), by the impugned order dated 28.02.2019 and now the assessee has filed the present appeal.

3. Heard and perused the record. Primarily it was submitted by the Ld AR that as the quantum appeal is allowed in favour of assessee the penalty order does not survive. Ld DR however could not assert anything on facts of case.

4. It can be observed from the matter before the Bench that the assessment order dated 20.03.2015 was challenged before Ld. CIT(A) and by order dated 28.02.2017. Ld. CIT(A) had directed to charge interest @ 9% on the quantum of Rs. 50 crores in place of 12% as calculated by the AO and appeal was preferred by both revenue and assessee before this Tribunal and in the assessee's appeal ITA no. 2037/Del./2017 was allowed on the basis that a Co-ordinate Bench vide order dated 10.06.2019 ITA no. 2399/Del/2014 had quashed the original order u/s 263 of the Act and directed assessing officer to delete the addition. The department appeal ITA No. 3076/Del./2017 was also consequently allowed in the light of order passed in ITA no. 2399/Del/2014 as original order u/s 143/263 was set aside.

5. 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.

Consequently, the appeal of the **assessee is allowed.**

**Order pronounced in the open court on 13<sup>th</sup> June, 2022.**

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

*Date:- 13<sup>th</sup> .06.2022*

**\*Binita, SR.P.S\***

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI