

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 6551/DEL/2019 [A.Y. 2012-13]

Shri Kapil Dev Ranwan
A - 31, Bhaleri Road, Sainik Basti
Churu, Rajasthan

Vs.

The D.C.I.T.
Circle - 1
Ghaziabad

PAN : ADJPR 6671 E

(Applicant)

(Respondent)

Assessee By : Ms. Deepika Agarwal, Adv
Ms. Viyushti Agarwal, Adv

Department By : Ms. Anupama Singla, Sr. DR

Date of Hearing : 15.06.2022
Date of Pronouncement : 15.06.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the Id.
CIT(A), Ghaziabad dated 29.05.2019 pertaining to Assessment Year 2012-
13.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the I.T. Act, 1961.

3. At the very outset, the ld. counsel for the assessee stated that the quantum addition has been deleted by this Tribunal in ITA No. 875/DEL/2017 vide order dated 05.11.2020.

4. The ld. DR fairly conceded to this.

5. We have carefully perused the order of this Tribunal in ITA No. 875/DEL/2017 for the impugned Assessment Year. We find force in the contention of the ld. counsel for the assessee. While deciding the appeal, this Tribunal has held as under:

"7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee was working in UK for more than 183 days which was never disputed by the Revenue at any point of time. Besides this the Revenue authorities are very well aware that the assessee has paid taxes in UK for the remuneration received in UK. The assessee is a resident

of India. Therefore, Article 16(2) does not apply in the present scenario. In-fact, if we go through the provisions of Section 90(2) of the Income Tax Act, 1961 and Article 24 of the India-UK DTAA, then the claim made by the assessee is valid and, therefore, the Assessing Officer as well as the CIT(A) was not right in making and sustaining the addition in that respect. Hence, appeal of the assessee is allowed."

6. Sublato Fundamento Cadit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the foundation [assessment] has been removed, the super structure i.e. penalty must fall. Accordingly, the penalty is directed to be deleted.

7. In the result, the appeal of the assessee in ITA No. 6551/DEL/2019 is allowed.

The order is pronounced in the open court on 15.06.2022 in the presence of both the rival representatives.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th June, 2022.

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	