

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA.No.6019/Del./2019
Assessment Year 2009-2010

The ACIT, Circle – 54 (1) New Delhi.	vs.	Smt. Ritu Mishra, D-187, Sushant Lok-1, Gurgaon. Haryana. PIN 122 001 PAN AATPM5732A
(Appellant)		(Respondent)

For Revenue :	Sh Toufel Tahir, Sr. DR
For Assessee :	-None-

Date of Hearing :	14.06.2022
Date of Pronouncement :	17.06.2022

ORDER

PER ANIL CHATURVEDI, A.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-35, New Delhi, dated 08.04.2019 relating to the A.Y. 2009-2010.

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

2.1. The assessee is an individual and proprietor of M/s. K.K. International, New Delhi. The assessee filed return of income for the A.Y. 2009-10 on 30.09.2009 declaring income of Rs.41,78,820/-. The case was selected for scrutiny. Thereafter, assessment was framed under section 144(1) read with section 145(3) of the I.T. Act, 1961 vide order dated 29.12.2011 and the total income was determined at Rs.4,00,78,580/- by inter alia making addition on account of suppressed gross profits of Rs.2,59,27,998/- and disallowance under section 40(a)(ia) amounting to Rs.98,21,762/-. On the aforesaid disallowances/additions made by the A.O, he vide order dated 27.03.2015 levied penalty of Rs.1,22,02,328/- under section 271(1)(c) of the I.T. Act, 1961.

2.2. Aggrieved by the order of the A.O. assessee carried the matter before the Ld. CIT(A) who granted partial relief to the assessee by deleting the penalty on the addition of Rs. 2,59,27,998/- on account of increase in gross profit. While deleting the penalty on the aforesaid addition, he noted that the addition has been deleted in appellate order

and, therefore, the penalty on such addition does not survive. With respect to the addition of Rs.35,87,182/- made under section 40(a)(ia), he upheld the levy of penalty.

3. Aggrieved by the order of Ld. CIT(A) to the extent of relief granted by him, the Revenue is now in appeal before the Tribunal and has raised the following ground :

“On the facts and circumstances of the case, the CIT(A) has erred in deleting penalty of Rs.1,22,02,328/- levied by the A.O. under section 271(1)(c) of the I.T. Act, 1961 for concealment of income.”

4. On the date of hearing, none appeared on behalf of the assessee despite notice of hearing that was issued. We, therefore, proceed to dispose of the appeal ex-parte qua the assessee, after hearing the Ld. D.R.

5. Before us, the Ld. D.R. supported the order of A.O.

6. We have heard the Ld. D.R. and perused the material on record. We find the Ld. CIT(A) while deleting the penalty on the addition of increase in G.P. has given a

finding that the addition on which the impugned penalty has been levied has been deleted in the appellate proceedings and, therefore, the penalty on such addition does not survive. Before us, no material has been placed by the Revenue to point-out any fallacy in the findings of the Ld. CIT(A) nor has Revenue placed any material to demonstrate that the addition on which the impugned penalty has been levied has been upheld by higher Judicial Forum. In such circumstances, we find no reason to interfere with the order of the Ld. CIT(A) and thus dismiss the ground of the Revenue.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 17.06.2022.

Sd/-
[N.K. CHOUDHARY]
JUDICIAL MEMBER

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 17th June, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "F" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.