

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.5217/Del/2019  
(Assessment Year : 2011-12)

DCIT Circle – 25(1) New Delhi  <b>PAN No. AAAC 3701 G (APPELLANT)</b>	Vs.	T. C. Healthcare Pvt. Ltd. Netaji Subhash Marg Daryaganj, New Delhi-02  <b>(RESPONDENT)</b>
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Assessee by	Shri P. C. Kashyap, F.C.A
Revenue by	Shri M. Barnwal, Sr. DR

Date of hearing:	29.06.2022
Date of Pronouncement:	29.06.2022

**ORDER**

**PER ANIL CHATURVEDI, AM :**

The present appeal filed by the Revenue is directed against the order dated 27.03.2019 of the Commissioner of Income Tax (Appeals)-27, New Delhi relating to Assessment Year 2011-12.

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

3. The assessee is a company who filed its return of income for A.Y. 2011-12 on 19.09.2011 at Nil after setoff of brought forward

losses. The original assessment was completed u/s 143(3) on 29.03.2014 assessing the income at Nil after setoff brought forward losses. The case was reopened by issuing notice u/s 148 of the Act dated 19.05.2015. Thereafter, assessment was framed u/s 144 r.w. Section 147 of the Act vide order dated 23.12.2016 after making addition of Rs.1,90,46,178/- but after the setoff of losses the total income was determined at Rs. Nil. On the aforesaid addition of Rs.1,90,46,178/- that was made by AO on such disallowance, AO vide order dated 28.06.2017 levied penalty of Rs.58,85,269/- 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 27.03.2019 in Appeal No.326/18-19 allowed the appeal of the assessee wherein penalty levied u/s 271(1)(c) of Rs.58,85,270/- was deleted. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *“On the facts and circumstances of the case, the ld CIT(A) erred in deleting the penalty imposed by assessing officer for furnishing inaccurate particulars. However, penalty imposed under section 271(1)(c) of the Act is justified in light of the fact that the amount which was directed to be paid by NPPA was in the nature of penal sum on account of excess payment received over and above the permissible limit. The interest expenses claimed were not found to be covered as business expenses under section 37(1) of the I T Act. Sole basis of deleting the penalty by Ld. CIT(A) is the fact that the appeal of assessee for claiming the interest payment has been decided in the favour of the assessee. However, the stated decision of Ld CIT(A) is further being contested before Hon’ble ITAT.”*
2. *“On the fact and circumstances of the case the order of Ld CIT(A) is perverse.”*

3. *“The appellant craves, leave or reserving the right to amend modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

5. Before us, at the outset, Learned AR submitted that in the present case the penalty u/s 271(1)(c) of the Act was levied by the AO on the addition of Rs.1,90,46,178/-. He submitted that aggrieved by the aforesaid addition made by the AO, assessee had carried the matter before CIT(A) who vide order dated 27.03.2019 in Appeal No.326/18-19 had deleted the addition made by AO and against the order of CIT(A) no appeal has been preferred by Revenue. He pointed to the copy of the relevant order. He therefore submitted that since the addition itself has been deleted and has attained finality, the penalty on such addition does not survive. He therefore submitted that ground of Revenue be dismissed.

6. Learned DR on the other hand did not controvert the submissions made by Learned AR but however supported the order of AO.

7. We have heard the rival submissions and perused the material available on record. In the present appeal, Revenue is aggrieved by the deletion of levy of penalty of Rs.58,85,270/- u/s 271(1)(c) of the Act on the addition of Rs.1,90,46,178/- that was made by AO. We find that CIT(A) while deleting the penalty at page 8 of his order has noted that the addition on which the impugned penalty has been levied itself 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.1,90,46,178/- 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 29.06.2022**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 29.06.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI