

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 9201/DEL/2019 (A.Y. 2015-16)

| | | |
|---|-----|--|
| DCIT, Central Circle : 17, New Delhi. | Vs. | M/s. Divine Infracon Pvt. Ltd., Plot No. 4, Sector : 13, Dwarka, Sector : 6, South West Delhi – 110 078. PAN No. AACCD4476A |
|---|-----|--|

AND

**C. O. No. 5/Del/2020
[in I.T.A. No. 9201/DEL/2019] (A.Y. 2015-16)**

| | | |
|--|-----|---|
| M/s. Divine Infracon Pvt. Ltd., Plot No. 4, Sector : 13, Dwarka, Sector : 6, South West Delhi-110 078. PAN No. AACCD4476A (APPELLANTS) | Vs. | DCIT, Central Circle : 17, New Delhi. (RESPONDENTS) |
|--|-----|---|

| | |
|-----------------------|---|
| Assessee by : | Shri Madhur Aggarwal, Advocate; |
| Department by: | Md. Gaysuddin Ansari, Sr. D. R.; |

| | |
|------------------------------|-------------------|
| Date of Hearing | 20.07.2022 |
| Date of Pronouncement | 26.07.2022 |

ORDER**PER YOGESH KUMAR US, JM**

The Present I.T.A. No. 9201/Del/2019 is filed by the Revenue and the C.O. No. 5/Del/2020 is filed by the assessee for assessment year 2015-16 against the order of the Ld. Commissioner of Income Tax (Appeals)-31, New Delhi, dated 31.10.2019.

2. The Revenue has raised the following grounds of appeal:-

I.T.A. No. 9201/DEL/2019 (A.Y. 2015-16)

“1. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in law and facts of the case in not treating the reference made by the AO to the DVO as valid and deleting the penalty amounting of Rs.57,38,358/-.

2. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in law and facts of the case that there is actual loss of revenue.

3. The order of Ld. CIT (A) is erroneous and not tenable in law and on facts.

4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

C. O. No. 5/Del/2020

“1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that while deleting the levy of penalty of a sum of Rs. 57,58,358/-, he should have quashed the impugned

penalty proceedings, as there was neither furnishing of any inaccurate particulars of income nor could it be validly held that there was any concealment of income on the facts of the case, neither there was any specific allegation in the show cause notice to that effect for initiation and imposition of penalty under section 271(1)(c) of the Act and as such, the penalty so levied is unsustainable in law and was liable to be deleted, on this ground.

1.1 That the learned CIT (A) has further failed to appreciate the fact that penalty so imposed on twin conditions is unjustified and contrary to various judicial pronouncements and as such, the penalty so levied by learned AO should have been quashed, on this ground also.

1.2 That further, on merits the deletion of penalty so levied under section 271(1)(c) is just and proper and the order so passed by learned CIT (A) be sustained on merits of the case.”

3. Brief facts of the case are that, the assessee Company which is engaged in the business of running of hotels, filed its return for the Assessment Year 2015-16 declaring loss of Rs. 27,83,37,701/-. The assessment proceedings has been initiated and the assessment order came to be passed on 04/06/2018 holding that, the amount of Rs. 22,93,71,100/- determined by the DVO as full value of the sale consideration received by the assessee and made an addition of Rs. 1,76,54,600/- to the total income of the assessee for the year under consideration as per Section 43CA of the Act. Consequent to the assessment order dated 04/06/2018, the penalty proceedings has been initiated against the assessee and vide order dated 30/11/2018 an order u/s 271(1)(c) of the Act has been passed by imposing penalty of Rs. 57,38,358/-.

4. Aggrieved by the penalty order dated 30/11/2018, the assessee has preferred an Appeal before the CIT(A). The Ld.CIT(A) vide order dated 31/10/2019 allowed the Appeal filed by the assessee by deleting the order of imposition of penalty. Aggrieved by the order of CIT(A) dated 31/10/2019, the Department is in appeal before us on the grounds mentioned above.

5. The Ld. DR vehemently submitted that the CIT(A) has erred in law and facts in not treating reference made by the A.O to the DVO as valid and erroneously deleted the penalty. Therefore, by relying on the order of the A.O sought for the interference by the Tribunal.

6. Per contra, the Ld. Counsel for the assessee submitted that, there is no document to show that the assessee has received more amount than it has shown in the sale deed. Further, relied on various judicial pronouncements to support his case and relied on the orders of the CIT(A)

7. We have heard the parties perused the material on record and gave our thoughtful consideration. The Ld.CIT(A) while adjudicating the appeal has minutely discussed the factual aspects and also invoked the provision of law and came to the conclusion. The finding of the Ld.CIT(A) are as under:-

“Undisputedly, the appellant in the tax audit report, vide Note-17 had very clearly disclosed the information that 13 properties were sold at the consideration below the circle rates. It was explained before the AO that certain area was sold below the circle rate because the market value of that area was below circle rate which was duly supported by the Valuation Report dated 28.02.2015 of M/s P&A Valuetech Pvt. Ltd who assessed the fair market value of the impugned properties at Rs. 16,47,00,000/-. However, in view of the provisions of section 50C, the AO referred the properties for valuation to the District Valuation Officer (DVO) who determined the

market value at Rs. 22,93,71,110/- as against the sale value declared by the appellant at Rs. 21,17,16,500/- resulting into difference of Rs. 1,76,54,600/-. This difference amounts to 8.34% of the sale value declared by the appellant It is also noticed that the DVO has worked out the difference in respect of 6 properties only. Undisputedly, there is neither any evidence nor even the allegation that the appellant had received money over and above the sale consideration disclosed in the sale deeds and the addition had been made on the basis of legal fiction created by section 43CA”.

8. In the case of CIT Vs. Madan Theaters Ltd.(2013) 44 taxmann.com 382 (Cal), it has been held that where actual amount received on account of sale of property was offered for taxation, but the A.O made addition invoking Section 50C on the basis of deemed sale consideration being higher than the sale value, in the absence of any iota of evidence that assessee has received more amount than that shown by it, penalty u/s 271(1)(c) was not imposable. In the case of CIT Vs. Fortune Hotels and Estates Pvt. Ltd. (2015)232 Taxman 481 (Bom), it has been held that where in respect of sale of a property, matter was referred to DVO who determined sale consideration at a higher amount, that by itself would not amount to furnishing of inaccurate particulars of income so as to levy penalty u/s 271(1)(c) in respect of addition made u/s 50C. Further, in the case of Harish Voovaya Shetty Vs. ITO, ITA No. 6383/Mum/2012 (A.Y 2007-08) order dated 03/07/2014, it has been held that penalty u/s 271(1)(c) cannot be imposed in respect of the addition made by applying Section 50C when there was no material on record to show that the assessee had received more amount than that shown by it on sale of property.

9. In the present case, the Ld. Assessing Officer, in the absence of any evidence regarding receipt of money in addition to the sale consideration disclosed in the sale deed and even without there being any allegation to that effect, the Ld. A.O based on the fiction created u/s 43CA of the Act, the addition has been made which cannot be sustained under law. By following the settled principle of law mentioned above, we are of the opinion that, the Ld.CIT(A) has justified in deleting the penalty imposed by the Ld. A.O. Therefore, the order of the Ld.CIT(A) requires no interference. Accordingly, we dismiss the Revenue's Grounds of Appeal.

10. In the result, the Appeal of the Revenue is dismissed.

11. In view of dismissal of the Appeal, the C.O becomes infructuous. Therefore, the C.O filed by the assessee is dismissed for having become infructuous.

Order pronounced in the open court on 26th July, 2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Dated : 26/07/2022

R.N

Copy forwarded to :

1. Appellants
2. Respondents
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI.