

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA no. 3956/Del/2018
[Assessment Year: 2010-11]**

M/s Gayatri Sewa Sansthan, H.No. 181, Shankar Vihar-1st, Near Surya Public School, G.T. Road, Lal Kuan, Ghaziabad. PAN: AAATG1960H	<u>Vs</u>	DCIT, Circle-1, Ghaziabad
APPELLANT		RESPONDENT
Appellant by	Ms. Deepashree Rao, CA	
Respondent by	Sh. Anuj Garg, Sr. DR	
Date of hearing	02.08.2022	
Date of pronouncement	04.08.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals), Muzaffarnagar, dated 30.03.2018 pertaining to the assessment year 2010-11. The assessee has raised following ground of appeal:

“That on the facts as well as in law the Ld. CIT(Appeal) Muzaffarnagar was not justified in confirming the penalty of Rs. 35,53,500/- u/s 271(1)(c) of the Income Tax Act, 1961.”

2. At the outset learned counsel for the assessee submitted that the present

appeal is filed against the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 (in short “the Act”). She submitted that quantum proceedings relating to the impugned penalty matter travelled up to the stage of the Tribunal and the Tribunal in ITA no. 4332/Del/2015 set aside the impugned additions to the file of the Assessing officer for decision afresh. Learned counsel submitted that, therefore, the impugned penalty does not survive. She further stated that Assessing Officer has already passed assessment order in the remand proceedings. She prayed that the impugned penalty be deleted.

3. On the contrary, learned Sr. DR supported the orders of the authorities below.

4. We have heard rival contentions. We find that in this case assessment u/s 143(3) was completed determining total income at Rs. 1,24,84,900/- against the returned income of Rs. 9,84,900/-. Thereby the Assessing Officer had made addition of Rs. 90,00,000/- and Rs. 25,00,000/- u/s 68 of the Act. Penalty proceedings were also initiated which culminated into the levy of the impugned penalty. However, in quantum appeal being ITA no. 4332/Del/2015 the Tribunal vide order dated 18.08.2020 had set aside the addition and restored the matter to the file of the Assessing Officer to make assessment afresh. The Assessing Officer yet again vide order dated 30.03.2022 sustained the additions and initiated penalty proceedings u/s 271(1)(c) separately. Therefore, under these undisputed facts, in

our considered view the penalty imposed in the original proceedings would not survive at present, hence the same is hereby set aside. Before parting, we clarify that we have not expressed any view on the merit of initiation of penalty proceedings by the Assessing Officer in remand proceedings. The Assessing Officer would be at liberty to deal with the same in accordance with law. After adjudication of issues in quantum on merits, it will be discretion of the Assessing Officer to consider initiation of penalty proceedings on issues involved afresh, in accordance with law.

5. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 4th August, 2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI