

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

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

**ITA No.1410/DEL/2018
[Assessment Year: 2007-08]**

M/s The Oriental Insurance Co. Ltd. A-25/27, Asaf Ali Road, New Delhi-110002	Vs	Asstt. Commissioner of Income Tax, Circle-1, LTU, NBCC Plaza Pushp Vihar, New Delhi-110017
PAN- AACT0627R		
Assessee		Revenue

**ITA No.1748/DEL/2018
[Assessment Year: 2007-08]**

Asstt. Commissioner of Income Tax, Circle-1, LTU, NBCC Plaza Pushp Vihar, New Delhi-110017	Vs	M/s The Oriental Insurance Co. Ltd. A-25/27, Asaf Ali Road, New Delhi-110002
		PAN- AACT0627R
Revenue		Assessee

Assessee by	Sh. Tarandeep Singh, Adv. And Sh. Pulkit Verma, Adv.
Revenue by	Sh. Amitabh K. Sinha

Date of Hearing	01.09.2022
Date of Pronouncement	06.09.2022

ORDER

PER SHAMIM YAHYA, AM,

These are cross appeals by the assessee and Revenue arising out of the order of the Ld. CIT(A)-22, New Delhi, dated 26.12.2017, pertaining to Assessment Year 2007-08.

2. Grounds of appeal raised by the assessee in ITA No.1410/Del/2018 reads as under:-

“1. That on facts and in law the Commissioner of Income Tax (Appeals) {hereinafter referred to as “CIT(A)”} erred in upholding levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 in respect to disallowance of depreciation allowance of Rs.7,01,24,122/- made by the Assessing Officer and upheld by CIT(A) during the course of quantum proceedings.

2. That on facts and in law the penalty order dated 09th March, 2017 passed by Assessing Officer u/s 271(1)(c) of the Act is bad in law and void ab-initio.

3. That on facts and in law the impugned order passed by the CIT(A) (to the extent it is prejudicial to the interest of the appellant) is bad in law and void ab-initio.”

3. Grounds of appeal raised by the Revenue in ITA No.1748/Del/2018

reads as under:-

“1.On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T. Act, 1961 against addition/disallowance of Rs.570,03,36,179/- claimed by the appellant on account of Profit on sale/redemption of investment by the assessee.”

4. At the outset, in this case, the Ld. Counsel for the assessee submitted that the appeal by the Revenue pertains to the issue of penalty on addition on account of profit on sale/redemption of investment. He further submitted that in the appeal by the assessee grievance is levy of penalty on the addition on account of depreciation. Ld. Counsel for the assessee further submitted that quantum appeal relating to both the issues has now been decided by the ITAT in ITA No.5796/Del/2015 vide order dated 12.01.2018.

5. That as regards the issue of addition on account of profit on sale/redemption of investment is concerned the ITAT has allowed the assessee’s appeal on that issue. Hence, he submitted that since the addition no more survives, resultantly, levy of penalty will also fail.

6. As regards the addition on account of depreciation is concerned, the ld. Counsel for the assessee pointed out that ITAT has set-aside the issue to the file of Assessing Officer for proper verification of details filed by the assessee. In this view of the matter, ld. counsel for the assessee pleaded that the addition on which penalty was levied does not survive. Hence, penalty levied in this regard can also not be sustained.

7. We have heard both the parties and perused the records. We find ourselves in agreement with the submission of the ld. counsel for the assessee. As regards the appeal by the assessee is concerned, the same is on account of levy of penalty on disallowance of depreciation. Since, the issue in quantum appeal has been set-aside by the ITAT to the file of the Assessing Officer, the ld. counsel for the assessee is correct in pleading that the addition on which penalty was levied does not survive. Hence, this appeal by the assessee stands allowed.

8. As regards, the Revenue's appeal is concerned, the same is on account of deletion by the Ld. CIT(A) of the penalty on addition on account of profit on sale/redemption of investment. Since, the ITAT in quantum appeal has deleted the said addition, the penalty levied on this account is liable to be deleted.

9. In the result, Revenue's appeal is dismissed and appeal of the assessee is allowed.

Order pronounced in the open court on 06th September, 2022.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER
Delhi; 06.09.2022.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi