

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 4709/DEL/2018 [A.Y 2013-14]

Shri Mukesh Khurana
B-7/100, Safdarjung Enclave
Extension, New Delhi

Vs.

The Dy. C.I.T
Central Circle
Noida

PAN: AMYPK 1514 B

(Applicant)

(Respondent)

Assessee By : None

Department By : Ms. Sarita Kumari, CIT- DR

Date of Hearing : 01.11.2022

Date of Pronouncement : 01.11.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - IV, Kanpur dated 12.04.2018 pertaining to A.Y. 2013-14.

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in confirming the penalty of Rs. 29,87,050/- levied by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. None appeared on behalf of the assessee in spite of several notices. Therefore we decided to proceed exparte.

4. We have heard the ld. DR at length. Case records carefully perused.

5. The roots for levy of penalty lie in the assessment order dated 31.03.2016 framed u/s 143(3) r.w.s 153A of the Act. Search and seizure operation u/s 132 of the Act was conducted at the premises of the assessee, comprising Shubhkamna Buildtech Pvt Ltd group of cases. Accordingly, notices u/s 153A of the Act were issued and served upon the assessee.

6. Pursuant to the said notice, the assessee filed return of income of Rs. 1,02,33,500/-. The Assessing Officer noticed that in the return filed u/s 153A of the Act, the assessee has shown income from short

term capital gain to the tune of Rs. 78,30,000/- which was not shown in the return of income filed u/s 139(1) of the Act.

7. The Assessing Officer found that the assessee had purchased a property for Rs. 1,48,50,000/- which was subsequently sold for Rs. 2,26,80,000/- on which the assessee made short term capital gain which was offered for taxation in the return filed u/s 153A of the Act. Assessment order was framed u/s 153A of the Act accepting the returned income as such, but penalty proceedings were separately initiated for levy of penalty u/s 271(1)(c) of the Act on the ground that the assessee did not return the capital gain in the return filed u/s 139(1) of the Act and, therefore, the Assessing Officer formed a belief that the assessee has concealed income and has filed inaccurate particulars of income and levied penalty of Rs. 29,87,050/-.

8. The assessee carried the matter before the Id. CIT(A) but without any success.

10. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the returned income of Rs. 1,02,33,500/- was assessed as such vide order dated 31.03.2016

framed u/s 143(3) r.w.s 153A of the Act. This means that there is no variation in the returned income and assessed income and only basis for levy of penalty is that in the return filed u/s 139(1) of the Act, the assessee inadvertently could not return short term capital gain made on purchase and sale of property at Noida.

11. Be that as it may, we find that the basis of levy of penalty is the assessment order dated 31.03.2016 framed u/s 143(3) r.w.s 153A of the Act wherein the returned income and assessed income are one and the same. Therefore, we do not find any reason for levy of penalty u/s 271(1)(c) of the Act. The Assessing Officer is directed to delete the same.

12. In the result, the appeal of the assessee in ITA No. 4709/DEL/2018 is allowed.

The order is pronounced in the open court on 01.11.2022 in the presence of the ld. DR.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 01st November, 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	