

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

**BEFORE,
SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.6021/Del/2019
(ASSESSMENT YEAR 2015-16)**

M/s Mrityunjay Real Estate Pvt. Ltd. C-4, 1 st Floor Malviya Nagar New Delhi-110 017 PAN-AAGCM 9748L	Vs.	Income Tax Officer Ward 17(2) New Delhi-110 002
(Appellant)		(Respondent)

Appellant by	Mr. Ruchesh Sinha, Advocate and Ms. Nivedita, Advocate
Respondent by	Mr. Jeetender Chand, Senior Departmental Representative ("Sr. DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-38, New Delhi ["Ld. CIT(A)", for short], dated 16/05/2019 for Assessment Year 2015-16.

Grounds taken in this appeal are as under:

"1. That the ex-parte order passed by CIT(A) confirming the penalty order passed by A.O is unlawful and erroneous.

2. That the Learned CIT(A) has grossly erred both on facts and on the circumstances of the case by upheld the Order of Ld A.O for imposition of penalty as he has not given the proper opportunity to be heard to the Appellant Company especially when the addition of Rs 70,39,198/- made by Ld. AO in Assessment order is still pending for adjudication before another CIT (Appeal). The Ld. CIT(A) acted arbitrarily in a hurriedly manner and has not acted as per the Principles of Natural Justice to provide the justice to the Appellant Company.

3. That the Learned CIT(A) has grossly erred both on the facts and on the circumstances of the case by passing the ex-parte Appellate Order in favour of Revenue though there was no concealment of income or furnishing of inaccurate particulars by the Appellant Company. The CIT (A) without giving the proper opportunity of being heard has passed the ex-parte order only on the basis of assumption, surmises and conjectures. The Appellant Company has preferred an appeal before Hon'ble CIT(A) against the quantum addition which is still pending for disposal. Therefore the decision of CIT(A) to upheld the penalty Order of Ld A.O is wrong, arbitrary and unlawful especially when the order for addition of Rs 70,39,198/- is still pending before another CIT(Appeal) for adjudication. Hence the imposed penalty of Rs. 21,75,113/- deserves to be deleted.

4. That the Learned CIT(A) has wrongly upheld the decision of Ld. A.O for imposition of penalty u/s 271(l)(c). He has not appreciated the fact that addition under section 43CA was made by overlooking the provisions contained in section 43CA(3) because Appellant Company had already entered into the Development Agreement on 10.10.2012 with M/s Faith Buildtech Pvt. Ltd. (Developer) and all the advance payments against Development Rights were received through proper banking channel during earlier financial years therefore, as per Section 43CA(3) circle rates prevailing as on the date of agreement was required to be considered for the purpose of computing sales price in place of circle rate prevailing during Financial Year 2014-15. Hence the very basis of making quantum addition in this case was erroneous. Moreover, Learned CIT(A) has not recorded any concrete reasons to demonstrate concealment of income or incorrect particular of income on the part of Appellant Company.

5. That we may be allowed to submit any new additional grounds of appeal, replies and submissions at the time of hearing.”

(A.1) In this case, assessment order dated 26/12/2017 was passed by the Assessing Officer (“AO” for short) u/s 143(3) of Income Tax Act (“IT Act” for short) wherein the assessee’s total income was assessed at Rs.69,01,650/-. In the return of income, the assessee had declared Nil income after adjusting brought forward losses amounting to Rs.78,277/-. However, taxes were paid by the assessee on Book Profit amounting to Rs.79,277/-. Separately, the Assessing Officer passed order dated 19/06/2018/- u/s 271(1)(c) of Income Tax Act, imposing penalty of Rs.21,75,113/- upon the assessee u/s 271(1)(c) of Income Tax Act. The assessee filed separate appeals in office of the Ld. CIT(A) against the aforesaid assessment order dated 26/12/2017 and the aforesaid order dated 26/12/2017 passed u/s 271(1)(c) of Income Tax Act. Vide impugned appellate order dated 16/05/2019, the Ld. CIT(A) confirmed the levy of penalty amounting to Rs.21,75,113/- and dismissed the assessee’s appeal. This order of the Ld. CIT(A) was an ex-parte order qua the appellant assessee. Aggrieved, the assessee has filed the present appeal in Income Tax Appellate Tribunal.

(A.2.1) At the time of hearing before us, the Ld. Counsel for the assessee informed that the assessee's appeal against the aforesaid assessment order dated 26/12/2017 is yet to be disposed off by the Ld. CIT(A) and that the assessee's appeal against quantum additions made vide aforesaid impugned assessment order dated 26/12/2017 is still pending. The representatives of both sides, the Ld. Counsel for the assessee as well as the Ld. Sr. DR for Revenue were in agreement that the impugned appellate order dated 16/05/2019 of the Ld. CIT(A) may be set aside giving direction to the Ld. CIT(A) to pass a fresh order in accordance with law only after disposing of the assessee's appeal against the quantum additions made vide aforesaid assessment order dated 26/12/2017. In view of the foregoing; and as representatives of both sides are in agreement with this, in the specific facts and circumstances of the present case before us, we set aside the impugned appellate order dated 16/05/2019 of the Ld. CIT(A) and we direct the Ld. CIT(A) to pass a denovo order in accordance with law, after disposing of the assessee's appeal against the aforesaid assessment order dated 26/12/2017 wherein quantum additions have been made.

(B) For statistical purposes, the appeal is treated as partly allowed.

This order was already pronounced orally on 15th November, 2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 22/11/2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 22/11/2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW, DELHI