

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

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER & SHRI
ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No. 5742/Del/2019
Assessment Years: 2012-13

ACIT, Circle-18(2), New Delhi	Vs.	NKC Projects (P) Ltd., C-3/438A, GF, Janakpuri, New Delhi-1100 58
PAN :AACCN4070E		
(Appellant)		(Respondent)

Assessee by	Shri Lalit Mohan, Adv.
Department by	Shri Jeetender Chand, Sr. DR

Date of hearing	21.11.2022
Date of pronouncement	.11.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the Revenue against order dated 02.04.2019 of learned Commissioner of Income-Tax (Appeals)-6, Delhi deleting penalty imposed of Rs.51,31,030 under Section 271(1)(c) of the Income-Tax Act, 1961 for the assessment year 2012-13.

2. At the outset, learned counsel appearing for the assessee submitted that the addition based on which the Assessing Officer imposed penalty under Section 271(1)(c) of the Income-Tax Act, 1961, in the meanwhile, has been deleted by the Tribunal while deciding the quantum appeal of the assessee. In this regard, learned counsel placed on record a copy of order dated 09.05.2022 passed by the Tribunal in ITA No.2353/Del/2019. The Learned Departmental Representative fairly agreed with the aforesaid submission of the assessee.

3. Having considered rival submissions, we find, while completing the assessment, the Assessing Officer disallowed an amount of Rs.1,58,14,533 under Section 40(a)(ia) of the Act for alleged non-deduction of tax at source. Based on the foresaid disallowance, penalty proceedings under section 271(1)(c) of the Act was initiated and ultimately an order was passed imposing penalty under Section 271(1)(c) of the Act. However, while deciding the quantum appeal of the assessee, in the order referred to above, the Tribunal has deleted the entire disallowance made under Section 40(a)(ia) of the Act. Thus,

when the disallowance is no more in existence, as a natural corollary, penalty imposed on such non-existent disallowance cannot survive.

4. In view of the aforesaid, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) in deleting the penalty. Grounds are dismissed.

5. In the result, the appeal is dismissed.

Order pronounced in the open court on 30th November, 2022.

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 30th November, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi