

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.8913/Del/2019
Assessment Year: 2007-08

AND

ITA No.8915/Del/2019
Assessment Year: 2013-14

ACIT, Circle-27(1), New Delhi	Vs.	M/s. Unitech Ltd., 6, Unitech House, Community Centre, Saket, New Delhi
PAN :AAACU1482H		
(Appellant)		(Respondent)

Appellant by	Sh. M. Baranwal, CIT (DR)
Respondent by	None

Date of hearing	26.12.2022
Date of pronouncement	26.12.2022

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeals by the Revenue are against two separate orders of learned first appellate authority deleting the penalty imposed under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') pertaining to assessment years 2007-08 and 2013-14.

2. When the appeals were called for hearing none appeared on behalf of the assessee. Even, there is no application seeking adjournment. Considering the fact that the assessee has failed to avail multiple opportunities of hearing, we proceed to dispose of the appeals ex-parte qua the assessee after hearing learned Departmental Representative and based on the materials available on record.

3. Briefly the facts are, the assessee, a resident corporate entity, is stated to be engaged in the business of construction and development of real estate projects. For both the assessment years under dispute, the assessee had filed its return of income voluntarily under section 139(1) of the Act. For the assessment year 2007-08, the assessee offered income of Rs.1218,53,37,410/-. Subsequently, the assessment was reopened under section 147 of the Act and completed vide order dated 30.03.2015 determining the total income at Rs.1234,95,60,960/-. The variation in total income was due to the following additions:

<i>i</i>	<i>Capital gains treated as Business Income</i>	<i>Rs.153,98,17,883</i>
<i>ii</i>	<i>Loan from BUUIPL Treated as Deemed Dividend</i>	<i>Rs.11,07,40,708</i>
<i>iii</i>	<i>Notional Interest disallowance on Share</i>	<i>Rs.1,85,35,549</i>

	<i>Application Money</i>	
<i>iv</i>	<i>Notional Interest disallowance on Unsecured Loans</i>	<i>Rs.2,13,38,368</i>
	Total	Rs.169,04,32,508

4. Similarly, for assessment year 2013-14, the assessee declared income of Rs.236,66,03,027/-. Whereas, while completing assessment under section 143(3) of the Act, the Assessing Officer determined the total income at Rs. 401,61,03,311/-. The variation in total income was due to the following additions:

<i>i</i>	<i>Notional Interest on Share Application Money</i>	<i>Rs.19,76,99,227</i>
<i>ii</i>	<i>Notional Interest on Unsecured Loans</i>	<i>Rs.115,09,67,769</i>
<i>iii</i>	<i>Rental Income treated as business income</i>	<i>Rs.4,56,54,716</i>
<i>iv</i>	<i>Advertising & Promotional expenses</i>	<i>Rs.52,06,423</i>
<i>v</i>	<i>Prior Period Expenses</i>	<i>Rs.5,62,317</i>
<i>vi</i>	<i>Expenses u/s 14A</i>	<i>Rs.24,06,00,155</i>
<i>vii</i>	<i>Late Deposit of PF employee contribution</i>	<i>Rs.4,85,65,343</i>
	<i>Less: Depreciation on Rented Properties</i>	<i>Rs.77,97,364</i>
	<i>Total Business Income</i>	<i>Rs.168,14,58,586</i>

5. Based on all the additions made in assessment years 2007-08, couple of additions, viz., Rs.19,76,99,227/- and Rs.115,09,67,769/- in assessment year 2013-14, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately pass orders imposing penalty under the said provision.

6. Against the penalty orders so passed, the assessee preferred appeals before learned Commissioner (Appeals). While deciding the appeals, learned Commissioner (Appeals) having found that the additions subjected to the imposition of penalty under section 271(1)(c) of the Act were deleted by the Tribunal while deciding quantum appeals of the assessee, deleted the penalty imposed under section 271(1)(c) of the Act, in both the assessment years under dispute.

7. Before us, learned CIT(DR) fairly agreed with the factual finding of learned Commissioner (Appeals) that additions giving rise to the penalty imposed under section 271(1)(c) of the Act have been deleted by the Tribunal. Thus, from the facts on record, it is evident, the additions giving rise to the penalty proceeding under section 271(1)(c) of the Act are not in existence in view of the order dated 24.07.2019 passed by the Tribunal in ITA No.1905/Del/2017 and Ors. That being the undisputed factual position emerging on record, the penalty imposed under section 271(1)(c) of the Act cannot survive. Accordingly, we uphold the decision of learned Commissioner (Appeals) in deleting the penalty imposed in both the assessment years under dispute. Grounds are dismissed.

8. In the result, both the appeals are dismissed.

Order pronounced in the open court on 26th December, 2022

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 26th December, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi