

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

**BEFORE,
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.4589/Del/2019
(ASSESSMENT YEAR 2014-15)**

Malhan Constructions Private Limited, Malhan One, Plot No.1, Sunlight Colony, Aashram, New Delhi-110 014 PAN-AAECM 5142L (Appellant)	Vs.	Income Tax Officer, New Delhi (Respondent)
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Appellant by	Ms. Roli Chaubey, CA
Respondent by	Mr. Jitender 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)-37, New Delhi ["Ld.CIT(A)", for short], dated 30/03/2019 for Assessment Year 2005-06.

Grounds taken in this appeal are as under:

"1. That in levying and confirming the penalty, the LAO and the Ld. Commissioner of Income Tax (Appeals-37), New Delhi respectively, have erred inasmuch as both failed to consider the facts of the case and the

evidence placed on record by the assessee during the assessment as well as the appeal proceedings and to correctly interpret the provisions of law regarding the liability to and levy of penalty in the light of such facts.

2. *That in levying and confirming the penalty, the LAO as well as the Ld. Commissioner of Income Tax (Appeals-37), New Delhi respectively, have erred in law as they have failed to correctly understand and interpret the intent and purposes of the provisions of law pertaining to levy of penalty u/s 271 (1) (c).*

3. *The LAO has levied penalty u/s 271(1)(c) and the Ld. Commissioner of Income Tax (Appeals) has confirmed it by acting contrary to the intent of the provisions of law as they have failed to keep in mind that penalty proceedings are separate from assessment proceedings, where fresh application of mind to the facts of the case and to the evidence filed on the contended issues is to be done to determine if penalty u/s 271(1)(c) is leviable.*

4. *Penalty has been incorrectly and unlawfully levied by ignoring the plethora of case laws that have ruled against the levy of penalty on facts similar to those existing in the case of the assessee and by relying on rulings where facts differ from those in the assessee's case.*

5. *That the penalty has not been levied on the satisfaction recorded during the assessment proceedings making the penalty levied unjustified, invalid and non est, based both, on the provisions of the Act and also on the numerous rulings of the courts of the land.*

6. *That in levying and confirming the penalty u/s 271(1)(c) on the assessee both, LAO and Ld. CIT (Appeals-37) have gone against the principles of natural justice.”*

(B) In this case, assessment order dated 20/03/2013 was passed by the Assessing Officer wherein an addition of Rs.53,00,000/- was made in respect of amounts received from Shri K.L. Arora (Rs.8,00,000/-), Ms. Neha Madan (Rs.20,00,000/-) and

Shri. R.N. Arora (Rs.25,00,000/-); totaling Rs.53,00,000/-. The Ld. CIT(A) deleted the aforesaid addition of Rs.8,00,000/- on account of amount received from Shri K.L. Arora; but sustained aforesaid additions on account of amounts received from Ms. Neha Madan (Rs.20,00,000/-) and Shri R.N. Arora (Rs.25,00,000/-) totaling Rs.45,00,000/-. The Assessing Officer imposed penalty amounting to Rs.16,46,662/- under section 271(1)(c) of Income Tax Act, vide order dated 22.02.2018; in respect of the aforesaid amount of addition totaling to Rs.45,00,000/-. Vide impugned appellate order dated 30/03/2019, the Ld. CIT(A) confirmed the aforesaid penalty amounting to Rs.16,46,662/-. Vide order dated 11/10/2021 in ITA No.3149/Del/2017, Co-ordinate Bench of Income Tax Appellate Tribunal ('ITAT', for short) at Delhi set aside the finding of lower authorities qua the amounts received from Ms. Neha Madan and Shir R.N. Arora; and restored the issue regarding aforesaid additions totaling Rs.45,00,000/- to the file of the Assessing Officer for decision afresh. The present appeal before us has been filed in ITAT by the assessee against the aforesaid impugned appellate order dated 30/03/2019 of the Ld. CIT(A).

(C) In the course of appellate proceedings in ITAT, written submissions were filed from the assessee's side, stating as under:

"It is informed that the above mentioned appeal related to the issue of penalty U/s 271(1)(c) consequent to assessment U/s 147 for AY 2005-06. It is further informed that the quantum order for AY 2005-06 was also the subject matter of appeal before the Hon'ble ITAT as ITA 3149/Del/2017. Vide its order thereon Dt. 11.10.2021, the Hon'ble Bench had set aside the assessment and restored the matter to the file of the assessing officer for a decision afresh. Copy of the order on the quantum appeal is attached herewith. Therefore now, since the assessment has been set aside, the penalty does not survive. Thus this appeal may be disposed-off accordingly."

(C.1) At the time of hearing before us, Ms. Roli Chaubey, Chartered Accountant, the learned Authorized Representative for assessee, relied on the aforesaid written submissions.

(C.2) The Ld. Sr. DR for Revenue did not offer any objection to submissions made on behalf of the assessee.

(C.2.1) It is not in dispute that vide aforesaid order dated 11/10/2021 of Co-ordinate bench of ITAT, Delhi, the issue regarding aforesaid quantum additions totaling Rs.45,00,000/- has been set aside and restored to the file of the Assessing Officer for fresh decision. Consequently, the aforesaid penalty amounting to Rs.16,46,662/-levied u/s 271(1)(c) of Income Tax Act in respect of the aforesaid quantum additions of totaling to Rs.45,00,000/- did not survive. In view of the foregoing, and in respectful deference to

the aforesaid order dated 11/10/2021 of Co-ordinate bench of ITAT Delhi, we set aside the impugned appellate order dated 30/03/2019 of the Ld. CIT(A) and cancel the aforesaid penalty amounting to Rs.16,46,662/-.

(D) By way of abundant caution we hereby clarify that this order does not constitute a bar against fresh initiation of penalty proceedings u/s 271(1)(c) of Income Tax Act in the course of consequent proceedings pursuant to aforesaid order dated 11/10/2021 of Co-ordinate Bench of ITAT, Delhi.

(E) In the result, for statistical purposes, this appeal of the assessee is allowed.

This order was already pronounced orally on 19th January, 2023 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 19/01/2023

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated:19/01/2023

Pk

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI