

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 5444 & 5445/Del/2019  
Assessment Year: 2011-12 & 2012-13**

Punam Duggal, HN-1406F, 2<sup>nd</sup>  
Floor, Gali No. 13, Govindpuri,  
Kalkaji,  
New Delhi

**PAN: AESPD6713K**  
(Appellant)

Versus

ACIT, Central Circle-4,  
New Delhi

(Respondent)

Appellant by : Sh. Vijay Kumar Singla, Ld. CA  
Respondent by : Sh. S.L. Verma, Ld. Sr. DR

Date of hearing: 19.01.2023  
Date of order : 31.01.2023

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

These appeals have been preferred by the Assessee against a consolidated order dated 07.06.2019 in various appeals including of the Assessee, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- 23, New Delhi (in short "Ld. Commissioner"), u/s. 271(1)(c) r.w.s. 250(6) of

the Income-tax Act, 1961 (in short 'the Act') for the assessment years 2011-12 and 2012-13 respectively.

**2.** Brief facts, common to both these appeals and relevant for their adjudication, are that on the basis of seizure and search action carried out by the Revenue Department on dated 29.12.2015, the Assessing Officer, vide assessment orders dated 27.12.2017 u/s. 153A of the Act, made additions of Rs.72,49,208/- and Rs.49,47,406/- respectively for the assessment years 2011-12 and 2012-13 on account of unexplained credit entries in the bank account of the Assessee.

**3.** Aggrieved by the above additions, the Assessee preferred first appeal before the Id. Commissioner, who vide appellate orders made enhancement to the tune of Rs.24,00,000/- and Rs.32,00,000/- respectively.

**4.** The Assessing Officer thereafter, initiated penalty proceedings u/s. 271(1)(c) of the Act and ultimately imposed a

penalty of Rs.9,27,000/- and Rs.13,36,000/-, which stood affirmed by the Id. Commissioner vide consolidated order dated 07.06.2019 passed in appeals filed against the penalty orders. Aggrieved by the impugned order, the Assessee is in these appeals before us.

**5.** The Id. AR of the Assessee, at the outset, claimed that the Assessee filed appeals (ITA No. 1810/Del/2019 & 1811/Del/2019) for the years under consideration before the Tribunal, along with batch of 51 group appeals and the Hon'ble Tribunal vide consolidated order dated 19.01.2021 allowed the quantum appeals of the Assessee by deleting the additions on the basis of which the impugned penalties were levied against the Assessee. It was therefore claimed that once the additions on the basis of which impugned penalties are imposed, stood deleted, the impugned penalties levied against the Assessee cannot survive.

**6.** The Id. DR though supported the impugned order of the Id. Commissioner, but could not refute the factual claim of the Assessee.

**7.** We have given thoughtful consideration to the peculiar facts and circumstances of the case. It is not in dispute that the quantum additions on the basis of which the impugned penalties were levied against the Assessee, stood deleted by the Tribunal vide order dated 19.01.2021. We, therefore, observe that once the aforesaid quantum additions do not survive, the very basis for imposing penalties u/s. 271(1)(c) of the Act stands collapsed and therefore, there remains no justification for survival of the impugned penalties. Therefore, laying our hands on the decision of Hon'ble Supreme Court in the case of K.C. Builders vs. ACIT, 135 Taxman 461 (SC), as relied by the Assessee, wherein it is held that where the additions made in the assessment order, on the basis of which penalty for concealment was levied, are deleted by the ITAT or otherwise, the penalty cannot stand by itself and is liable to be cancelled, we are inclined to delete the impugned penalties imposed against the Assessee. Consequently, both the appeals of the Assessee deserves to be allowed.

**8.** In the result, both the appeals filed by the Assessee stands allowed.

Order pronounced in the open court on 31/01/2-23.

Sd/-

Sd/-

**(DR. BRR KUMAR)**

**(N.K. CHOUDHRY)**

**ACCOUNTANT MEMBER**

**JUDICIAL MEMBER**

\*aks/-