

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.492/Del/2016
Assessment Year: 2007-08

M/s. Assotech Supertech Joint, Venture, 1114, Hemkunt Chanber, 89, Nehru Place, New Delhi PAN No.AAAJAI382K	Vs	ITO Ward- I Noida
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Sh. Anuj Garg, Sr DR

Date of hearing:	20/03/2023
Date of Pronouncement:	20/03/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-1, Noida dated 30.11.2015 pertaining to A.Y.2007-08.

2. The grievance of the assessee is that the CIT(A) erred in confirming the penalty of Rs.31 lacs levied by the AO u/s. 271 (1) (c) of the Act.

3. The roots for the levy of penalty lie in the assessment order dated 31.12.2009 framed u/s.143(3) of the Act. The returned income of Rs.1,56,490/- was assessed at Rs.91,31,037/- after making an addition of Rs.89,74,547/-. The addition was on

account of the estimation of gross profit on work in progress computed @ 2.5% in addition to the income declared by the assessee. The assessee is carrying on the business of Real Estate Development and have obtained a land from SIDCUL for construction of Residential/ Commercial space. As no sale in the P & L was shown the profit was estimated as mentioned here in above.

4. Assessee carried the matter before the CIT(A) but without any success. The quantum addition was confirmed by the CIT(A).

5. Penalty proceedings u/s.271 (1)(c) of the Act were separately initiated and after affording an opportunity of being heard the penalty proceedings were concluded by levying of Rs. 31 lacs.

6. The levy of penalty was challenged before the CIT(A). The CIT(A) was influenced by the fact that since the quantum addition has been confirmed by the first appellate authority the penalty is leviable automatically.

7. Before us none appeared on behalf of the assessee. Our record show that on earlier occasions also none appeared on behalf of the assessee and the appeal was decided exparte which was later on recalled in M.A No.238/Del/2018.

8. Even today the assessee chose not to appear in person or through any authorized representative, we decided to proceed exparte. Though there is a mention of the quantum addition being confirmed by the CIT(A) but there is no one to tell us to what happened before the Tribunal.

9. Perusal of the order of the CIT(A) show that he has been heavily influenced by the additions made and has not considered

why the penalty was levied automatically when the assessment proceedings and penal proceedings are separate and distinct from each other, therefore, the CIT(A) ought to have gone into the merits of the levy of penalty instead of simply confirming the penalty on the basis of the confirmation of quantum addition.

10. Therefore, in the interest of justice and fair play we deem it fit case to remit it back to the files of the CIT(A). The CIT(A) is directed to first verify the status of the appeal before the Tribunal and then decide the appeal afresh after giving a reasonable and sufficient opportunity of being heard to the assessee and consider the facts afresh for the levy of penalty u/s.271 (1)(c) of the Act de-hors the fate of the addition before the CIT(A).

11. In the result, the appeal is allowed for statistical purpose.

12. Decision announced in the open court on 20.03.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 20.03.2023

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi