

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.440/Del/2020  
(Assessment Year : 2012-13)

ACIT Circle – 27(1) New Delhi  <b>PAN No. AAACU 9453 C</b> <b>(APPELLANT)</b>	Vs.	M/s. Unitech Acacia Projects Pvt. Ltd. 6-Community Centre Saket, New Delhi-110 017  <b>(RESPONDENT)</b>
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Assessee by	-None-
Revenue by	Ms. Sangeeta Yadav, Sr. D.R.

Date of hearing:	29.03.2023
Date of Pronouncement:	29.03.2023

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the Revenue is directed against the order dated 30.10.2019 passed by the Commissioner of Income Tax (Appeals)-Delhi under Section 250 of the Income Tax Act, 1961 for Assessment Year 2012-13.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company who electronically filed its return of income for A.Y. 2012-13 on 31.03.2014 declaring total income of Rs.8,19,02,387/-. The case was selected for scrutiny and thereafter

assessment was framed u/s 143(3) vide order dated 25.03.2015 and the total income was determined at Rs.15,40,21,922/- by making following additions:

- i. Rs.5,99,09,832/- on account of late payment of tax deducted at source.
- ii. Rs.1,22,09,703/- on account of late deposit of TDS.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who confirmed the addition on account of late payment of TDS of Rs.5,99,09,832/- and upheld the disallowance of Rs.4,07,000/- out of disallowance of Rs.1,22,09,703/- made by AO. On the aforesaid disallowance which were upheld by CIT(A), AO vide penalty order dated 31.03.2019 passed u/s 271(1)(c) r.w.s 274 of the IT Act levied penalty of Rs.1,95,69,800/-. Aggrieved by the penalty order of AO, assessee carried the matter before CIT(A) who vide order dated 30.10.2019 (Appeal No.CIT(A), Delhi-9/10055/2019-20) deleted the penalty. Aggrieved by the order of CIT(A) Revenue is now in appeal before the Tribunal and has raised the following grounds:

*“1. Whether on facts and in the circumstances of the case the Ld CIT(A) is justified in deleting the penalty was levied for furnishing inaccurate particulars, as the assessee claimed penal interest on TDS.*

*2. The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of the appeal.”*

5. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed despite the fact that the

notice of hearing was issued to the assessee. The case file further reveals that in the past the matter was listed for hearing for several times but on those dates also there was no appearance from the side of assessee. In such a situation and in the absence of any co-operation from the side of assessee, we proceed to dispose of the appeal ex-parte qua the assessee, after considering the submissions of Learned DR and the material on record.

6. Before us, Learned DR supported the order of AO and submitted that AO had rightly levied the penalty and CIT(A) ought to have upheld the levy of penalty.

7. We have heard the Learned DR and perused the material available on record. In the present appeal the grounds raised by Revenue is with respect to the deletion of penalty levied for furnishing of inaccurate particulars of income. We find that CIT(A) while deleting the penalty has noted that non-deduction of tax was neither an act of furnishing of inaccurate particulars of income nor concealment of income but rather it was a technical and venial breach in nature. As far as the levy of penalty on interest on late payment of TDS is concerned, while deleting the penalty CIT(A) has given a finding that interest expense on TDS is a debatable issue and assessee had established its bonafide for the purpose of claiming deduction of expenditure on interest on delayed deposit of TDS. He relying on the decisions cited in his order held that penalty cannot not be levied on a debatable issue. Before us, Revenue has not pointed out any fallacy in the findings of CIT(A). In such a situation, we find no reason to

interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

**8. In the result, appeal of Revenue is dismissed.**

**Order pronounced in the open court on 29.03.2023**

**Sd/-**

**(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 29.03.2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI