

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. C.N. PRASAD, JUDICIAL MEMBER**

ITA No.2784/Del/2019
Assessment Year: 2011-12

Godwin Construction Pvt. Ltd. A-151, Defence Colony, Mawana Road, Meerut U.P. 250002 PAN No.AAEFG1843R (APPELLANT)	Vs	DCIT Central Circle Meerut (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Toufel Tahir, Sr DR

Date of hearing:	22/06/2023
Date of Pronouncement:	22/06/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-4, Kanpur dated 16.01.2019 pertaining to A.Y. 2011-12.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the penalty of Rs. 39,66,000/- 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 31.03.2013 framed u/s. 143 (3) of the Act wherein the

returned income of Rs.2427270/- was assessed at Rs.27274270/-. The quantum additions travelled up to the Tribunal and the Tribunal in ITA No.3228/Del/2015 deleted the quantum additions. The relevant findings of the coordinate Bench read as under :-

“11. We have heard the rival submissions and perused the material on record. The issue in the present appeal is the addition of Rs.51,39,000/- and Rs.66,31,000/- made by AO and upheld by CIT(A). It is an undisputed fact that during the course of search, certain documents were found and the assessee was called upon by the AO to explain the contents of the documents. Assessee furnished the explanations which were not found acceptable and, therefore, AO made the additions of the amounts reflected in those documents. Before us, Ld AR has placed on record the explanations that were submitted by the assessee before the authorities explaining the contents. The perusal of the same would reveal that assessee has inter alia given the details of the amount, received, the receipt number and the details of the amount which were refunded including the cheque number and date. The explanation and the details given by the assessee has not been shown to be untrue or contrary to the facts stated before the authorities. In such a situation, we are of the view that assessee has discharged the onus cast upon it. As far as the presumption u/s 292C is concerned, we are of the view that the provision of section 292C of the Act is only a deeming provision.. The presumption under section 292C of the Act is rebuttable presumption and the document has to be considered considering the totality of the facts of the case. The deeming provision cannot be applied mechanically ignoring the facts of the case and the surrounding circumstances. Considering the totality of the aforesaid facts, we are of the view that in the present case, no

addition of the impugned amounts is called for. We, therefore, direct the deletion of the additions made by AO and upheld by CIT(A). Thus the grounds of the assessee is allowed.”

4. Since the foundation has been removed the super structure must fall meaning thereby since the additions have been deleted there is no basis for the levy of penalty u/s. 271 (1) (c) of the Act. The AO is accordingly directed to delete the penalty so levied. The appeal of the assessee is allowed.

5. Decision announced in the open court on 22.06.2023.

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Dated: .06.2023
Neha
Copy forwarded to:
1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

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

Asst. Registrar
ITAT, New Delhi