

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.102/Del/2022
Assessment Year: 2013-14

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|---|-----------|---|
| ACIT Exemption Ghaziabad | Vs | Mussorie Dehradun Development Authority Transport Nagar, Saharanpur Road, Dehradun Uttarakhand PAN No.AAAAM4651Q |
| (APPELLANT) | | (RESPONDENT) |

| | |
|---------------|------------------------|
| Appellant by | Ms. Smita Singh, Sr DR |
| Respondent by | None |

| | |
|------------------------|------------|
| Date of hearing: | 26/07/2023 |
| Date of Pronouncement: | 26/07/2023 |

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order dated 22.11.2021 by NFAC, Delhi pertaining to A.Y. 2013-14.

2. The grievance of the revenue read as under :-

1. *Whether on the facts or in law, the CIT(A) was justified in allowing appeal of assessee on the issue of imposition of penalty, without appreciating the fact that the addition made by the AO was confirmed by the CIT(A) itself and ITAT, as far as the*

additions on the issue under consideration is concerned.

2. *Whether on the facts or in law, the CIT(A) was justified in allowing appeal of assessee without appreciating the fact that the disallowances made by the AO in respect of claim of overriding title made by the assessee in respect of infrastructure account have been confirmed by the appellate authorities*

3. *The order of Ld. CIT(A) be cancelled and the order of the AO be restored.*

3. A perusal of the aforementioned grounds show that the quantum addition have been confirmed by the appellate authorities, therefore, the CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Act.

4. None appeared on behalf of the assessee inspite of several notices, therefore, we decided to proceed exparte.

5. The DR was heard at length. The DR supplied the copy of the order of this Tribunal in assessee's own case for A.Y.2006-07 and 2007-08 and pointed out that the quantum additions have been confirmed by this Tribunal. The DR further pointed out that the said order of the Tribunal has been affirmed by the Hon'ble Uattrakhand High Court in IT Appeal No.5 and 6 of 2012 order dated 20.06.2022.

6. We have carefully perused the orders of the authorities below. The roots for the levy of penalty lie in the assessment order dated 22.09.2015 framed u/s.143(3) of the Act wherein the AO made the addition of Rs.26540006/- to the returned income of the assessee.

7. The addition was confirmed by the CIT(A) who followed the order of this Tribunal in ITA No.2147/Del/2013 wherein the Tribunal has held that the income is income of the assessee and not that of the State Government.

8. The order of the Tribunal which has been followed by the CIT(A) for dismissing the appeal of the assessee was affirmed by the Hon'ble High Court of Uttarakhand in 142 taxmann.com 192.

9. Considering the history of the quantum addition we are of the considered view that this is a fit case for the levy of penalty u/s. 271 (1)(c) of the Act. We, therefore, set aside the order of the CIT(A) and confirm the levy of penalty u/s. 271 (1)(c) of the Act.

10. In the result, the appeal of the revenue is allowed.

11. Decision announced in the open court on 26.07.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Dated: .07.2023
Neha

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

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi