

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH :F: DELHI)**

**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1891/Del/2019
Assessment Year: 2007-08**

DCIT, CC-14 New Delhi. (PAN:AAKCS1698B)	Vs.	Shivnandan Buildcon Pvt. Ltd., Flat No.4-R.R., Apartment, 3-4, Manglapuri, Mehrauli, New Delhi
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Gautam Jain, Adv.
Respondent by : Ms. Sunita Verma, CIT- DR

Date of Hearing : 12.09.2023
Date of Pronouncement : 18.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of learned Commissioner of Income-tax(Appeals)-XXVI, New Delhi, Appeal No.10100/17-18 dated 17.12.2017 against the order under Section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 31.03.2017 passed by ACIT, Central Circle-14, New Delhi for the assessment year 2007-08.

2. The solitary ground raised by the Revenue in the present appeal is in respect penalty of Rs.5,05,21,518 imposed under Section 271(1)(c) of the Act which has been reduced from 300% to 150% by the learned Commissioner of Income-Tax(Appeals).

3. Brief facts of the case are that a search was conducted in the case of assessee on 31.01.2008. Assessment was completed under Section 144 read with section 153A vide order dated 24.12.2009 which was subjected to direction given under Section 264 to reframe the assessment. Consequently, assessment was completed under Section 144 read with section 153A and 264 vide order dated 08.03.2013 wherein income was assessed at Rs.5,01,12,134 as against returned income of Rs.(-) 18,788.

4. At the outset, learned counsel submitted that the quantum proceedings relating to assessment went in appeal before the coordinate Bench of ITAT Delhi in ITA No.2267/Del/2016 for which the order was pronounced on 08.02.2023, by way of consolidated order comprising of 111 appeals by the revenue and cross-objections by the assessee, with the case of the assessee listed at Sr. No. 35 on page 6 in the cause title. In the said quantum appeal, the assessment order was annulled by allowing the additional ground taken by the assessee challenging the jurisdiction in absence of valid approval obtained in accordance with law

under Section 153D of the Act. On the strength of this fact, learned counsel submitted that the impugned order imposing penalty has no basis to stand and, therefore, penalty so imposed is ought to be deleted.

5. Before taking into consideration, the fact of annulment of assessment order as noted above by the coordinate Bench in assessee's own case, we refer to the provisions contained in section 271(1)(c) whereby the penalty is computed on the 'amount of tax sought to be evaded' by the assessee by way of concealment of particulars of income or furnishing of inaccurate particulars of income. Considering this provision, we note that the very foundation for imposing the penalty in the present case has extinguished since the assessment order by which demand of tax was raised has been annulled. Once, the assessment is annulled, the 'amount of tax sought to be evaded' also gets extinguished which in fact is nothing but the demand arising out of the assessment.

5.1 We find that in the present facts and circumstances, the legal maxim '*sublato fundamento cadit opus*' is applicable, meaning thereby – 'a foundation being removed, the superstructure falls'. Once the basis of a proceeding is gone, the action taken thereon would fall to the ground. In the absence of such foundation, imposition of penalty does not survive. Thus, when the assessment order in the present case has been annulled by the decision of coordinate Bench of ITAT in assessee's own

case as noted above, thereby, removing the foundation of levy of penalty under Section 271(1)(c) of the Act. Accordingly, impugned penalty is liable to be deleted. Grounds taken by the revenue are, thus, dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 18.09.2023.

Sd/-

**(C.M. Garg)
Judicial Member**

Sd/-

**(Girish Agrawal)
Accountant Member**

Dated: 18 September, 2023

Mohan Lal

Copy forwarded to:

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

By Order

Assistant Registrar
ITAT, Delhi Benches, New Delhi