

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

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

ITA No.563/Del/2022
Assessment Year: 2016-17

Goel Exim India Private Limited Shop No.403, 4th Floor, 2633-2634, 4th Floor, Bank Street, Karol Bagh, New Delhi-110005 PAN No.AAACG1799B	Vs.	ACIT Central Circle-28 Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Anup Mehta, CA
Respondent by	Sh. Sh. Vivek Upadhyay, Sr. DR

Date of hearing:	02/11/2023
Date of Pronouncement:	02/11/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-29, New Delhi dated 19.08.2021 pertaining to A.Y. 2016-17.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty u/s. 271 (1) (c) of the Act.

3. The roots for the levy of penalty lie in the assessment order dated 06.12.2018 framed u/s.143(3) of the Act wherein the returned loss of Rs.51545351/- was assessed at a loss of Rs.15297900/-.

4. The quarrel travelled upto the Tribunal and this Tribunal in ITA No.1201/Del/2021 vide order dated 22.09.2023 has deleted the enhancement done by the CIT(A). The relevant findings of the coordinate bench read as under :-

“14. Ld. AR has also relied judgments in Toffee Agricultural Farms Pvt. Ltd. v. Income Tax Officer 141 taxmann.com 429 (ii) Hari Mohan Sharma v. Asstt. Commissioner of Income Tax 110 taxmann.com 119 in support of the contention that the Ld. CIT(A) cannot change the provisions of law qua the item of which assessment was made. Since in the case in hand the Appellate Authority has made enhancement in the assessment by discovering a new source of income, not considered by the Assessing Officer in the order appealed against the ground as raised deserves to be allowed.

15. In the light of aforesaid determination of the grounds, the appeal of Revenue is dismissed and that of assessee is allowed, with consequences to follow as per the grounds determined.”

5. Since the foundation has been removed the penalty so levied does not have legs to stand. The AO is directed to delete the penalty.

6. In the result, the appeal of the assessee is allowed.
7. Order pronounced in the open court in the presence of both the parties on 02.11.2023.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA

Date:- .11.2023

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI