

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "G" : DELHI]

BEFORE SHRI G. S. PANNU, HON'BLE VICE-PRESIDENT
A N D
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3565/Del/2017
निर्धारणवर्ष/Assessment Years: 2007-08

Saga Developers Pvt. Ltd., B-67, Sarita Vihar, New Delhi - 110 076.	<u>बनाम</u> Vs.	DCIT, Central Circle : 19, New Delhi.
PAN No. AAJCS4932K		
अपीलार्थी / Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे /Assessee by :	Shri Srikant, Advocate;
राजस्वकीओरसे / Department by :	Shri H. K. Choudhary, [CIT] - D. R.

सुनवाईकीतारीख/ Date of hearing :	02/11/2023
उद्घोषणाकीतारीख/Pronouncement on :	09/11/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-27 [hereinafter referred

to CIT (Appeals)] New Delhi, dated 30.03.2017 for assessment year 2007-08 in sustaining the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (the Act).

2. At the outset, the ld. Counsel for the assessee submits that the addition made while completing the assessment under section 153A of the Act based on which penalty under section 271(1)(c) was levied has been deleted by the Tribunal in ITA. No. 3164/Del/2014 dated 13.10.2023 and, therefore, since the quantum additions have been deleted by the Tribunal, it is the prayer of the assessee that the penalty be deleted.

3. The ld. DR fairly agreed with the submissions.

4. Heard rival submissions perused the orders of the authorities below and the order of the Tribunal in quantum proceedings. On perusal of the record before us it is noticed that penalty under section 271(1)(c) of the Act was levied on the following additions:-

(i) Disallowance under section 40A(3)	Rs. 4,07,600/-
(ii) Disallowance for negative balance	Rs. 4,75,075/-
(iii) Deemed dividend under section 2(22)(e)	Rs.29,06,914/-

5. The assessee filed appeal against the order of the Assessing Officer imposing penalty under section 271(1)(c) of the Act on the above additions. The ld. CIT (Appeals) deleted the penalty in so far as the disallowance under section 40A(3) to Rs.4,07,600/- is concerned and sustained the penalty on the disallowance of negative cash balance and deemed dividend under section

2(22)(e) of the Act of Rs.4,75,075/- and Rs.29,06,914/- respectively. We observe that the Tribunal by order dated 13.10.2023 in ITA. No. 3164/Del/2014 deleted the addition/disallowance made towards negative cash balance of Rs.4,75,075/- and deemed dividend of Rs.29,06,914/- in the absence of any incriminatory documents in the course of search following the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd. [(2023) 149 taxmann.com 399 (SC)]. Therefore since the additions have been deleted by the Tribunal, the penalty levied on the basis of such additions has no legs to stand. Thus, we quash the penalty order passed under section 271(1)(c) of the Act.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on : 09/11/2023.

Sd/-
(G. S. PANNU)
VICE-PRESIDENT

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 09/11/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /

DR, ITAT, DELHI

6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	02.11.2023
Date on which the typed draft is placed before the dictating Member	03.11.2023
Date on which the typed draft is placed before the Other Member	09.11.2023
Date on which the approved draft comes to the Sr. PS/PS	09.11.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	09.11.2023
Date on which the fair order comes back to the Sr. PS/PS	09.11.2023
Date on which the final order is uploaded on the website of ITAT	09.11.2023
Date on which the file goes to the Bench Clerk	09.11.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

