

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3255/Del/2023

निर्धारणवर्ष/Assessment Year: 2009-10

| | | |
|--|-------------|---|
| Late Smt. Sudershan Kapoor (through legal heir Shammi Kapoor) 1701, Ground Floor, ATS Greens Village, Sector-93A Express Way Noida, Noida, Uttar Pradesh. PAN No. AEQPK2478G | बनाम Vs. | ITO, Ward-3(4), Aaykar Bhawan, A2D, Sector-24, Noida, Uttar Pradesh. |
| अपीलार्थी Appellant | | प्रत्यर्थी/ Respondent |

| | |
|-------------------------------|--|
| निर्धारितीकीओरसे /Assessee by | Shri Deepesh Jain, Adv. & Shri Shaurya Jain, CA |
| राजस्वकीओरसे /Revenue by | Shri Anuj Garg, Sr. DR |

| | |
|----------------------------------|------------|
| सुनवाईकीतारीख/ Date of hearing: | 28.12.2023 |
| उद्घोषणाकीतारीख/Pronouncement on | 12.03.2024 |

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld. CIT(Appeals) - (NFAC) dated 25.09.2023 arising out of the penalty order passed u/s 271(1)(c) of the Act.

2. At the outset, the Ld. Counsel for the assessee submits that the assessment made u/s 143(3) of the Act making addition of Rs.41,36,250/- u/s 69 of the Act as an unexplained investment has been deleted by the Ld.CIT(A) which order was also sustained by

the Tribunal in ITA No.2364/Del/2019 dated 15.05.2020. Therefore, it is pleaded that the penalty levied on the basis of the addition made in the assessment order be deleted.

3. Heard rival submissions. We find that while completing the assessment u/s 144/148 of the Act dated 18.11.2016 an addition of Rs.41,36,250/- was made u/s 69 of the Act as an unexplained investment on the investment made in the purchase of immovable property. This addition was deleted by the Ld.CIT(A) and the order of the Ld.CIT(A) was sustained by the Tribunal by dismissing the appeal of the Revenue in ITA No.2364/Del/2019 dated 15.05.2020 which is placed on record. Therefore, since the addition made in the assessment order came to be deleted the penalty levied on the basis of the addition made in the assessment order cannot survive. Thus, we direct the AO to delete the penalty levied u/s 271(1)(c) of the Act.

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

Order pronounced in the open court on 12/03/2024

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

Dated: 12.03.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi