

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'H', NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND

SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NOS. 3081, 3082 & 3083/DEL/2024  
A.YRS. : 2008-09, 2009-10 & 2010-11

ASSISTANT COMMISSIONER OF INCOME TAX, ROOM NO. 192A, FIRST FLOOR, C.R. BUILDING, NEW DELHI – 2	Vs.	M/S U.K. PAINTS (INDIA) PRIVATE LIMITED, 19, DDA COMMERCIAL COMPLEX, KAILASH COLONY, NEW DELHI – 110 048 (PAN: AAACU0057C)
<b>(Appellant)</b>		<b>(Respondent)</b>

AND

CROSS OBJECTION NOS. 93, 94 & 95/DEL/2024  
(IN ITA NOS. 3081, 3082 & 3083/DEL/2024  
A.YRS. : 2008-09, 2009-10 & 2010-11

M/S U.K. PAINTS (INDIA) PRIVATE LIMITED, 19, DDA COMMERCIAL COMPLEX, KAILASH COLONY, NEW DELHI – 110 048 (PAN: AAACU0057C)	Vs.	ASSISTANT COMMISSIONER OF INCOME TAX, ROOM NO. 192A, FIRST FLOOR, C.R. BUILDING, NEW DELHI – 2
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Ms. Nimisha Singh, CIT-DR
Assessee by	Sh. R.K. Kapoor, CA

**ORDER**

**PER BENCH :**

These appeals filed by the Revenue and Cross Objections by the Assessee are directed against the separate impugned orders all dated 11.05.2023 passed by the Ld. CIT(A)/NFAC, New Delhi in relation to assessment years 2008-09, 2009-10 & 2010-11 respectively. Since common issues involved in the department appeals, hence, the same were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 3081/Del/2024 (AY 2008-09) being the lead case.

2. The ground raised in Revenue's appeal no. 3081/Del/2024 (AY 2008-09) read as under:-

“Whether, on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the penalty of Rs. 3,40,01,806/- u/s. 271(1)(c) when the appeal of the Revenue against the quantum is pending before the Hon'ble High Court and yet to attain finality.”

3. Briefly stated, facts are that the AO passed the assessment order u/s. 153A read with section 143(3) on 30.3.2015 after making additions. Simultaneously, AO had initiated penalty proceedings u/s. 271(1)(c) of the Act for having furnished inaccurate particulars of income by the assessee. On first appeal, against the additions, the Ld. CIT(A) confirmed the addition, but also enhanced it to Rs. 10,00,34,735. AO proceeded with the penalty proceedings u/s. 271(1)(c) in respect of Rs. 10,00,34,735/- considering it to be income in respect of which the assessee was deemed to have concealed the particulars of income on account of furnishing the inaccurate particulars of income. Accordingly, the

AO imposed the penalty of Rs. 3,40,01,806/- u/s. 271(1)(c) vide order dated 29.3.2018. Against the penalty order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 11.5.2023 has partly allowed the appeal of the assessee by deleting the penalty in dispute by holding that once the quantum additions have been deleted by the ITAT, the penalty is not sustainable in the eyes of law. Against the action of the ld. CIT(A), Revenue is in appeal before us.

4. At the time of hearing, Ld. Counsel for the assessee stated that Ld. CIT(A) has deleted the penalty levied by the AO u/s. 271(1)(c) of the Act by holding that once the additions made by the AO in the assessment order have been deleted by the ITAT in the quantum appeals then the penalty u/s. 271(1)(c) does not survive. He further submitted that in fact part of the additions made by the AO were deleted by the ld. CIT(A) also and AO levied the penalty only on the amounts which were upheld by the Ld. CIT(A). Per contra, Ld. DR fairly accepted the same.

5. Upon hearing both the counsels and perusing the records, we find that in the quantum appeal relating to this penalty appeal, has been deleted by the ITAT vide order dated 20.4.2023 in assessee's own case, by holding as under:-

*“...Owing to the conclusion that no interest has been paid by M/s Vatika Ltd., the additions made in the hands of M/s U.K. Paints, M/s Span India Pvt. Ltd., M/s Scorpio Research & Consultants Pvt. Ltd., M/s SEH Realtors Pvt. Ltd. on account of interest income are unsustainable.”*

5.1 In view of above, we are of the considered opinion that once the quantum addition stands deleted, the penalty levied thereon is not sustainable in the eyes of law and thus deserves to be deleted. Hence, Ld. CIT(A) has rightly deleted the penalty in dispute. Accordingly, we do not find any infirmity in the order of

the Ld. CIT(A) and therefore, uphold the same. Resultantly, the appeal filed by the Revenue for the assessment year 2008-09 stands dismissed.

6. As regards assessment years 2009-10 & 2010-11 are concerned. Since the facts of the case are similar and identical to assessment year 2008-09 as aforesaid, hence, our aforesaid decision given for the assessment year 2008-09 shall apply *mutatis mutandis* to the assessment years 2009-10 & 2010-11 as well. We hold and direct accordingly. As a result, the revenue's appeals for AYs 2009-10 & 2010-11 also stand dismissed.

7. As regards Assessee's 03 Cross Objections are concerned, since the Ld. Counsel for the assessee during the hearing, has made a statement that he is not pressing and the same may be dismissed as such. Keeping in view of the same, all the Cross Objections of the Assessee are accordingly dismissed, as not pressed.

8. In the result, all the 03 Revenue's appeals as well as 03 Assessee's Cross Objections stand dismissed in the aforesaid manner.

Order pronounced on 25/11/2024.

**Sd/-**  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

“SRBHATNAGAR”

**Copy forwarded to:**

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

Asstt. Registrar, ITAT, New Delhi