

2. The Revenue has raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of assessee without considering the facts and merit of this case.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deciding that penalty levied by the AO is not sustainable on the basis of order of ITAT dated 23.01.2024 where in the Hon'ble ITAT deleted the addition amounting to Rs. 5.52.73.757- made by AO vide order u/s 143(3) r.w.s. 148 of the Act, and the Ld. CIT(A) has not considered the impact of quantum and nature of addition and consequential amount of penalty (Rs. 1,87,87,550/-) thereon where as department is recommending further appeal before the Hon'ble High Court against order of the Hon'ble ITAT.

3. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.

4. That the grounds of appeal are without prejudice to each other.

5. The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

3. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

4. At the very outset, the ld. counsel for the assessee submitted that the quantum addition made in the assessment of the A.Y under consideration has been deleted by the ld. CIT(A), therefore, there remains no basis for levy of penalty u/s 271(1)(c) of the Act.

5. The ld. DR fairly conceded to this.

6. We have given thoughtful consideration to the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. We find that the ld. CIT(A) has deleted the additions made in the assessment. *Sublato Fundamento Cadit Opus*, meaning thereby, that in case the foundation is removed, the super structure falls. Since the quantum addition has been deleted and the foundation has been removed, the super structure i.e. penalty must fall.

7. In the result, the appeal of the Revenue in ITA No. 2149/DEL/2024 is dismissed.

The order is pronounced in the open court on 28.11.2024.

Sd/-

**[MAHAVIR SINGH]
VICE PRESIDENT**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 28th NOVEMBER, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	