

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 535/Del/2017 : Asstt. Year : 2007-08

Anil Gupta, Proprietor Mohit Trading Co., B-1013, 1 st Floor, Green Field Colony, Near NHPC Chowk, PO: Amar Nagar, Faridabad-121003	Vs	Income Tax Officer, Ward-11(2), Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. ACRPG5313K		

**Assessee by : Sh. Alok Kumar Gupta, CA
Revenue by : Sh. Amrit Lal, Sr. DR**

Date of Hearing : 17.05.2017	Date of Pronouncement : 30.05.2017
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ORDER

This is an appeal by the assessee against the order dated 24.08.2015 of Id. CIT(A), Faridabad.

2. Following grounds have been raised in this appeal:

“1. The order of the Id. Commissioner Income Tax Appeals Faridabad confirming the penalty of Rs.168677 u/s 271(1)(c) of the Income Tax Act, 1961 does not hold good and erroneous as the relevant quantum addition has been deleted by the hon’ble Income Tax Appellate Tribunal.

2. On the facts and circumstances of the case the Id. Commissioner of Income Tax Appeals Faridabad erred in confirming the penalty of Rs.168677 u/s 271(1)(c) of the Income Tax Act, 1961.

3. The appellant on the facts and circumstances of the case denies to be levied penalty of Rs.168677 u/s 271(1)(c) of the Income Tax Act, 1961.

4. The assessee craves leave to add, amend, delete, and modify any grounds of the appeal before/during the hearing of the appeal and all the above grounds are without prejudice to each other.”

3. During the course of hearing the ld. Counsel for the assessee furnished the copy of the order dated 27/10.2016 of the Tribunal in ITA No.4935/Del/2013 and submitted that the addition on the basis of which impugned penalty was levied, has been deleted. The aforesaid contention of the ld. Counsel for the assessee was not controverted by the ld. DR.

4. After considering the submissions of both the parties, it appears that the addition on the basis of which penalty was levied by the AO and sustained by the ld. CIT(A) has been deleted in ITA NO. 4935/Del/2013 vide order dated 27.10.2016 by the ITAT Bench ÷Aø New Delhi. Since the addition has been deleted, so the penalty u/s 271(1)(c) of the Income-tax Act, 1961 is not leviable. On a similar issue the Honøble Supreme Court in the case of K. C. Builders & Others Vs ACIT (2004) 265 ITR 562 wherein it has been held as under:

“Where the additions made in the assessment order on the basis of which penalty for concealment is levied, are deleted, there remains no basis at all for levying penalty for concealment and, therefore, in such a case no penalty can survive and the penalty is liable to be

cancelled. Ordinarily, penalty cannot stand if the assessment itself is set aside.”

5. I, therefore, by keeping in view the ratio laid down by the Honøble Supreme Court deleted the penalty levied by the AO and sustained by the ld. CIT(A).

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

(Order Pronounced in the Court on 30/05/2017)

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

Dated: 30/05/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR