

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.L.P.SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-5610/Del/2013
(ASSESSMENT YEAR-2000-01)**

ITO, Ward-9(2), New Delhi. (APPELLANT)	Vs	Stellar Capital Services Pvt.Ltd., 325, Vardhman Grand Plaza, Mangalam Place, Sector-3, Rohini, New Delhi-110060. PAN-AAACS3356A (RESPONDENT)
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Assessee by	Ms. Anima Barnwal, Sr. DR
Revenue by	Sh.Kapil Goel, Adv.

Date of Hearing	27.07.2016
Date of Pronouncement	26.09.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the Revenue assailing the correctness of the order dated 08.07.2013 of CIT(A)-XII, New Delhi pertaining to 2000-01 assessment year on the following grounds:-

1. *"The Ld. CIT(A) erred in law and on facts in condoning the delay in filing appeal before CIT(A).*
2. *The Ld.CIT(A) has erred in law and on facts in quashing the proceeding u/s 271(1)(c) of the Income tax Act, 1961 thereby deleting the penalty of Rs.34,77,070/- levied by the AO.*
3. *The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

2. Ld.Sr.DR, Ms. Anima Barnwal moved an adjournment petition requesting for time on the following grounds:-

"More time may kindly be allowed to the Department for preparation of this case as no regular Sr.DR has been posted to "D" Bench for this week."

3. Ld.AR, Mr. Kapil Goel, Advocate made a mention that the departmental appeal deserves to be dismissed as the quantum proceedings were quashed in appeal by the CIT(A). The Revenue challenged this order before the ITAT and the ITAT vide order dated 24.02.2016 in ITA No.5122/Del/2013 dismissed the departmental appeal. Copy of the said order was filed. Accordingly it was his prayer that since the additions stand deleted the penalty order cannot survive. The appeal was passed over in order to grant time to the Ld.Sr.DR.

3.1. In the second round, considering the material available on record wherein admittedly the additions itself did not survive. The Ld.Sr.DR considering the impugned order wherein quashed the assessment. In view of the fact that the said order stood confirmed by the ITAT had no objection if the appeal was dismissed. Accordingly Ld.Sr.DR was required to address whether she would want to take back the adjournment moved or she would want it to be treated as argued after the rejection of the adjournment. Ld.Sr.DR submitted that since paucity of departmental representatives is being highlighted administratively she would request that the adjournment moved may be rejected and the appeal may be treated as argued.

4. We have heard the rival submissions and perused the material available on record. On a consideration thereof, we find that in the peculiar facts and circumstances of the case order dated 13.06.2013 in the quantum proceedings passed by the CIT(A) quashing the assessment has been the basis for the quashing the penalty order, the fact that the Co-ordinate Bench in ITA NO.5122/Del/2013 vide order dated 24.02.2016 upheld this quashing of the re-opening of the assessment the impugned order deserves to be upheld. In view thereof, the appeal of the Revenue is dismissed as infructuous.

5. In the result, the appeal of the Revenue is dismissed.

The order is pronounced in the open court on 26th September 2016.

Sd/-

(L. P. SAHU)
ACCOUNTANT MEMBER

Amit Kumar

Copy forwarded to:

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

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

ASSISTANT REGISTRAR,
ITAT NEW DELHI