

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No. 3363/DEL/2018
[Assessment Year: 2006-07]**

Heritage Infracon Pvt. Ltd. 502, D Mall, Metaji Subhash Palace, Pitampura, New Delhi.	<u>Vs</u>	DCIT, Central circle, Karnal.
PAN- AABCH6527K		
APPLICANT		RESPONDENT
Applicant by	Sh. R.C. Rai, CA	
Respondent by	Sh. Prabhat Ranjan, Sr. DR	
Date of hearing	11.05.2022	
Date of pronouncement	17.05.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals)-3, Gurgaon dated 28.02.2018, pertaining to the assessment year 2006-07, confirming the penalty of Rs. 45,44,450/- imposed by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961.

2. The assessee has raised following ground of appeal:

“1. *That the impugned penalty order dated 26.02.2016 as passed under section 271 (1) (c) of the Income Tax Act is arbitrary, unjust and illegal.*

2. *On the facts and in the circumstances of the case as well as in law the Ld. Assessing Officer grossly erred in imposing penalty of Rs. 45,44,450/- under section 271 (1) (c) of the Income Tax Act, 1961.*

3. *On the facts and in the circumstances of the case as well as in law the Ld Assessing Officer grossly erred in alleging and concluding that the appellant has introduced its own unaccounted money in the grab of share capital and share premium.*

4. *On the facts and in the circumstances of the case as well as in law, the Ld. Assessing Officer and Ld. CIT Appeal had not given reasonable opportunity of being heard.*

5. *On the facts and in the circumstances of the case as well as in the law the Ld. Assessing Officer grossly erred in capriciously ignoring /rejecting the vital and legally tenable documentary evidences tendered and contention raised during the assessment proceedings.*

6. *The appellant crave right to add /delete/ alter or modify any or all the grounds of appeal.*

7. *These action of Ld. Assessing Officer being arbitrary, unjust, illegal and invalid in law liable to quashed and it is prayed to your honor that they please be quashed and /or any other relief just deem fit and proper please be directed”*

3. Facts giving rise to the present appeal are that in this case assessment was framed u/s 153A(1)(b) of the Income-tax Act, 1961 (“the Act”). Thereby the Assessing Officer made addition of Rs. 1,35,00,000/- and assessed the income at Rs. 1,35,00,000/- against the nil income declared by the assessee. The Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the Act separately by issuing penalty notice u/s 271(1)(c) of the Act. Thereafter, the Assessing Officer vide order dated 26.2.2016 imposed penalty of Rs. 45,44,450/- . Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who, after considering the submissions, confirmed the penalty imposed by the Assessing

Officer. Now the assessee is in appeal before this Tribunal.

4. At the outset learned counsel for the assessee submitted that in quantum proceedings the Tribunal vide its order dated 4.12.2019 was pleased to delete the addition made by the Assessing Officer. The assessee has filed copy of the order of the Tribunal in quantum appeal being ITA No. 1919/Del/2015 (A.Y. 2006-07).

5. On the contrary learned DR supported the orders of the authorities below.

6. We find that the coordinate Bench of this Tribunal in ITA no. 1919/Del/2015 for the assessment year 2006-07 in the case of the assessee has quashed the assessment order by observing as under:

“9. We have given thoughtful consideration to the orders of the authorities below and have carefully perused the decisions relied upon by the Id. representatives. It is true that the entire assessment is devoid of any reference to any incriminating material or evidence found during the course of search and seizure proceedings. We find that the Assessing Officer has taken a leaf from the search operations conducted at the premises of Jain brothers and formed a belief that the assessee is one of the beneficiaries of the accommodation entries provided by the Jain brothers. However, the premises of the assessee were also searched and in the search proceedings, no incriminating material or evidence was found by the search party.

10. Share application money/premium received by the assessee has already been recorded in its books of account and return of income was already filed on 30.03,2007. No notice u/s 143(2) of the Act was issued and served upon the assessee and by necessary implication, return of income was accepted. The ratio laid down by the Hon'ble Delhi High Court in the case of Kabul Chawla squarely applies on the facts of the case in hand wherein the Hon'ble High Court has held that completed assessment can be interfered with by the Assessing Officer while making assessment u/s 153A of the Act only on the basis of some incriminating material unearthed during the course of search.

11. While laying down the aforesaid ratio, the Hon'ble High Court has considered the decision in the case of Anil Bhatia 352 ITR 493, also of the Hon'ble High Court of Delhi. The decision relied upon by the Id. DR in the case of E.N. Gopakumar [supra] is of the Hon'ble Kerala High Court and since we are governed by the Hon'ble Jurisdictional High Court of Delhi, with our utmost respect to the Hon'ble High Court of Kerala, we are following the ratio laid down by the Hon'ble High Court of Delhi. Respectfully following the decision of the Hon'ble Jurisdictional High Court, Ground No. 1 is allowed and the assessment order is held to be bad in law and, accordingly, quashed.

12. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the additions.”

7. The Revenue has not disputed the fact that the assessment has been quashed by the Tribunal in ITA no. 1919/Del/2015, therefore, penalty imposed by the Assessing officer cannot survive. We hold accordingly.

8. The appeal of the assessee, therefore, stands allowed in terms of our observation herein above.

Order pronounced in open court on 17th May, 2022.

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI