

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7863/Del/2017
(Assessment Year: 2004-05)

DCIT, Central Circle-32, New Delhi	Vs.	Appolo Traexim Pvt. Ltd., A-20, Naraina Industrial Area, Phase-1, Naraina, New Delhi PAN: AAECA0010D
(Appellant)		(Respondent)

Revenue by :	Shri Prakash Dubey, Sr. DR
Assessee by:	None
Date of Hearing	04/01/2021
Date of pronouncement	04/01/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Id DCIT, Central Circle-32, New Delhi [Ld AO] for Assessment Year 2004-05 wherein, the Id CIT(A) has deleted the penalty of Rs. 53,81,250/- imposed u/s 271(1)(c) of the Act by the Id AO for an addition of Rs. 1.5 crores. The Id CIT (A) deleted penalty for the reason that addition made by the Id AO of Rs. 1,50,00,000/- has been deleted by the coordinate bench. **LD AO 's grievance is that** the above order of the coordinate bench has not been accepted by the revenue **and further appeal has been filed before the Hon'ble Delhi High Court.** Hence, this appeal.
2. The brief fact of the case shows that a search and seizure operation was carried out on 19.01.2009. Notices u/s 153A of the act was issued on 02.06.2010. The assessee filed its return of income declaring loss of Rs. 1,08,448/- on 09.07.2010. The assessment u/s 153A read with section 143(3) of the Act was passed on 31.12.2010 wherein, an addition of Rs. 1,50,00,000/- was made in the hands of the assessee under Section 68 of

the Act with respect to allotment of shares to 21 companies where the assessee failed to produce the directors of those share applicants companies. Further, addition of Rs. 1,60,366/- was also made on account of disallowance of expenditure. This assessment order assessed the total income of the assessee of Rs. 1,50,51,918/-. The Id AO further initiated the penalty proceedings u/s 271(1) (C) of the Act for concealment of income with respect to bogus share application money.

3. On appeal before the Id CIT(A) as per order dated 02.07.2013 this addition was confirmed.
4. However, on filing of the appeal before the coordinate bench the above **addition was deleted based on the decision of the Hon'ble Delhi High Court** in CIT Vs. Kabul Chawla 380 ITR 573 and Pr. CIT Vs. Meeta Gutguttia 152 DTR 153.
5. However, as per order dated 28.03.2005 based on the order of the Id CIT(A) confirming the above addition, the Id AO levied a penalty of Rs. 53,81,250/- u/s 271(1)(c) for the concealment of income.
6. The assessee challenged the same before the Id CIT(A), who passed an order on 24.10.2017 deleting the above penalty for the reason that the addition has been knocked off by the coordinate bench and therefore, the penalty has no lags to stand.
7. Despite notice none appeared on behalf of the assessee and therefore, the issue is decided on merits of the case.
8. The Id DR submitted that revenue has not accepted the above decision of the coordinate bench deleting above addition and has preferred appeal **before the Hon'ble Delhi High Court. However, necessary details about the admission of the above appeal or its status were not provided.**
9. On carefully consideration of the facts when the addition has already been knocked off by the coordinate bench really the penalty has no lags to stand upon. When the additions itself are deleted based on which penalty is levied, Naturally, such penalty also does not sustain. Revenue has **stated that it has filed appeal before Hon'ble Delhi High Court, therefore,** in case the decision of the coordinate bench is reversed in the case of the

assessee on the quantum addition, penalty may be revised in view of the provision in accordance with the law.

10. In the result, the solitary ground of appeal and the appeal of the Id AO is dismissed.

Order pronounced in the open court on 04 /01/2021.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 04 /01/2021
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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