

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA.No.6757/Del./2018
Assessment Year 2006-2007

M/s. DSC Limited, E-9, 3 rd Floor, NDSE Part-2, New Delhi. PIN – 110049. PAN AAACD0003D	vs.	The ACIT, Central Circle 14, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri K. Sampath, Advocate & Shri V. Rajkumar, Advocate.
For Revenue :	Ms. Nidhi Srivastava, CIT-DR

Date of Hearing :	19.07.2021
Date of Pronouncement :	19.07.2021

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the Order dated 03.08.2018 of the Ld. CIT(A)-XXVI, New Delhi, relevant to the A.Y. 2006-2007.

2. Levy of penalty of Rs.1,01,54,933/- under section 271(1)(c) of the I.T. Act, 1961 by the A.O. and upheld by the

Ld. CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Learned Counsel for the Assessee, at the outset, submitted that the A.O. has passed the order under section 147/143(3) of the I.T. Act, 1961, determining the total income of assessee at Rs.57,19,15,422/- as against the returned income of Rs.54,16,13,061/- Referring to the order of the Tribunal in ITA.No.146/Del./2015 Dated 31.10.2018, for the A.Y. 2006-2007, the Learned Counsel for the Assessee submitted that the Tribunal has quashed the re-assessment proceedings, therefore, once the re-assessment proceedings are quashed, the penalty does not survive. He accordingly submitted that the Order of the Ld. CIT(A) in confirming the penalty levied by the A.O. under section 271(1)(c) of the I.T. Act should be deleted.

4. The Ld. D.R. on the other hand, supported the Order of the Ld. CIT(A).

5. We have heard the rival arguments made by both sides, perused the Orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We find that as against the returned income of Rs.54,14,79,842/-, the A.O. completed the assessment under section 147/143(3) of the I.T. Act, 1961 determining the total income of the assessee at Rs.57,19,15,422/- wherein he made addition of Rs.3,01,69,142/- on account of unverifiable purchases and Rs.1,33,219/- under section 14A read with Rule 8D. It may be pertinent to mention herein that the original assessment order was completed under section 143(3) on 15.10.2008 determining the total income at Rs.54,16,13,061/-. We find the A.O. initiated the penalty proceedings subsequently and levied the penalty of Rs.1,01,54,933/- @ 100% of tax sought to be evaded under section 271(1)(c) of the I.T. Act, 1961, which has been upheld by the Ld. CIT(A). We find the Tribunal in the quantum proceedings in ITA.No.146/Del./2015 Order Dated 31.10.2018 has already quashed such re-assessment proceedings. Therefore, once the re-assessment proceedings are quashed, the addition does not survive.

Since the addition does not survive, the penalty also has no legs to stand and has to be deleted. Accordingly, the Order of the Ld. CIT(A) sustaining the penalty is set aside and the grounds raised by the Assessee are allowed.

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

Order pronounced in the open Court at the time of hearing itself i.e., on 19.07.2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 19th July, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.