

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 2157/DEL/2016 ( A.Y 2011-12)**

**AND**

**ITA No. 6295/DEL/2016 ( A.Y 2011-12)**

**(THROUGH VIDEO CONFERENCING)**

Elite Realtech Pvt. Ltd. M-11, Middle Circle Connaugh Circus New Delhi PAN: AACCE2400P <b>(APPELLANT)</b>	Vs	ACIT Central Circle-32 New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Piyush Kaushik, Adv, Sh. Ajay Bhagwani, FCA,</b>
<b>Respondent by</b>	<b>Sh. Jagdish Singh, Sr. DR &amp; Ms. Nidhi Srivastava, CIT, DR</b>

<b>Date of Hearing</b>	<b>11.02.2021</b>
<b>Date of Pronouncement</b>	<b>13.04.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the assessee against the order dated 31/12/2014 passed by CIT(A)-XXX, New Delhi and order dated 29/09/2016 passed by CIT(A)- 31, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

**ITA No. 2157/DEL/2016**

1. *That on the circumstances of the case, the assessment made u/s 153A of*

*the Act by the Assessing Officer, and confirmed by the CIT(A), is bad on facts and in law on the grounds that -*

*i) as per Panchnama no material whatsoever, was seized in the course of search u/s 132 of the Act on 07.12.2010 on the assessee and therefore the income returned ought to have been accepted, and*

*ii) the utilization of the material seized in the course of search on 15.11.2007 on M/s BPTP Ltd (and not on the assessee) was not permissible in the present assessment in as much as it is proved/evidenced from AO's own record that no material was found in the course of aforesaid search, which belonged to the assessee, and because of which fact no action was taken u/s 153C in the hands of the assessee and it would amount to revisiting the matter on same facts, which is not permissible.*

*2. That without prejudice on the facts and circumstances of the case and in law, the CIT(A) has erred in not deleting the total addition made by the A.O. on account of alleged interest paid as PDCs from undisclosed sources.*

*3. That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-XXX, New Delhi are bad in law and void ab initio”*

**ITA No. 6295/DEL/2016**

*1. “That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-31, New Delhi are bad on facts and in law and are void ab initio.*

*2. That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the penalty of Rs. 10,62,998/- imposed by the Assessing Officer u/s 271(1)(c) of the IT Act, 1961*

*3. That the CIT(A) erred in confirming penalty imposed u/s 271(1)(c), despite the fact that the AO while initiating and imposing the penalty u/s 271(1)(c) has not specified against which default for the (i) concealment of particulars of income or for (ii) furnishing of inaccurate particulars of income.”*

3. The assessee Company is engaged in the business of real estate. A search and seizure action u/s 132 was conducted on 7/12/2010 in the BPTP Group of cases in which the assessee was also covered. Accordingly proceedings u/s 153A were initiated in assessee's case. A notice u/s 153A of the Act was issued requiring the assessee to furnish the true and correct return of income. In response thereto, the return of income was filed declaring a total loss of Rs. 3,100/-. The assessment was completed u/s 153A/143(3) for the Assessment Year 2011-12 vide order dated 28/3/2013 by the Assessing Officer at income of Rs. 1,31,28,977/- thereby making an addition of Rs. 1,31,32,077/- on account of interest on Post Dated Cheques (PDCs). Aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee vide order dated 31/12/2014. In the meanwhile, the penalty proceedings u/s 271(1)(c) of the Act were initiated for the present Assessment Year and penalty order was passed on 31/3/2016 thereby levying penalty of Rs. 10,62,998/-. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee vide order dated 29/9/2016.

4. As regards merits of the quantum appeal are concerned, the Ld. AR submitted that the Assessing Officer in its order referred only the seized material during the search on 15/11/2007 when the assessee company was not even in existence. The assessee company was incorporated only on 30/07/2009 and on date of search i.e. 15/11/2007, the assessee company was not existent, the material seized during the course of first search has absolutely no correlation with the assessee company. The second search on BPTP Group of Companies was finally concluded on 5/2/2011 and even during the second search no adverse material of any sort pertaining to the assessee company was recovered which can give even a slightest of indication that the assessee company is paying interest on PDC's beyond 6 months from the sale deed out of the books. The Assessing Officer in its order has not referred/mentioned any seized material found during the course of second

search concluded on 5/2/2011 pertaining to the assessee company which can give any clue even in a remotest manner with respect to payment of interest on PDC's out of books beyond 6 months from sale deed. The Ld. AR relied upon the decision of the Co-ordinate Bench of the Tribunal in case of one of the group company i.e. M/s Impower Infrastructure Pvt. Ltd. Vs. ACIT in ITA No. 6637 & 6818/del/2014 order dated 18/5/2018 which is factually similar to the assessee's case. The Ld. AR further submitted that under these same identical circumstances, the assessee's case is also squarely covered by the order of the Co-ordinate Bench of the Tribunal in case of another group company i.e. Utkarsh Real Tech Pvt. Ltd. Vs. ACIT (2019) 76 ITR(Tribunal) 688 ITAT Delhi. Thus, in view of these facts, submissions and legal positions, the Ld. AR submitted that under identical facts and circumstances, the assessee's case is squarely covered from aforesaid two decisions of Co-ordinate Benches of the Tribunal and addition may be deleted.

5. As relates to penalty appeal, the Ld. AR submitted that the penalty levied is bad in law also on account of the reason that notice u/s 274 read with Section 271(1)(c) did not specify the specific limb of Section 271(1)(c) for which penalty proceedings have been initiated by way of striking off the inappropriate words in penalty notice. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of PCIT Vs. M/s Sahara India Life Insurance Company Ltd. ITA No. 475/20 order dated 2/8/2019 and also the decision of Karnataka High Court in case of CIT Vs. Manjunath Cotton & Ginni Factory 359 ITR 565 which is confirmed by the Hon'ble Supreme Court in case of CIT Vs. M/s SSA's Emerald Meadows order dated 5/8/2016. Thus, the Ld. AR submitted that both the quantum appeal as well as penalty appeal of the assessee be allowed.

6. The Ld. DR relied upon the assessment order and the order of the penalty along with both the orders of CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee company was not in existence when the first search took place on the group of BPTP and the seized material therein clearly does not belong to assessee company. Secondly, at the time of the second search no incriminating material was found in respect of the assessee company. Hence, the addition made on PDC's based on the first search does not have any corroborative evidence which has been brought by the Revenue on record. The CIT(A) as well as the Assessing Officer has failed to establish that the assessee company was involved in unexplained/unaccounted money transactions. Therefore, the assessee succeeds in quantum appeal.

8. As regards penalty order, firstly, the correct limb was not struck off or rather indicated by the Assessing Officer in the notice under Section 274 r.w.s. 271(1)(c) of the Act and hence the decision of the Jurisdictional High Court in case of M/s Sahara India Life Insurance Ltd. (supra) is squarely applicable in present case. Besides this, since the quantum appeal has been decided in favour of the assessee and addition has been deleted, the penalty itself does not survive. Hence, both the appeals of the assessee are allowed.

9. In result, both the appeals of the assessee are allowed.

**Order pronounced in the Open Court on this 13th Day of April, 2021.**

**Sd/-**

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 13/04/2021  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI