

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 2001/DEL/2018 [A.Y 2006-07]**

**ITA No. 2002/DEL/2018 [A.Y 2007-08]**

The Addl. CIT  
Range - 4  
New Delhi

Vs. Housing & Urban Development  
Corporation Ltd, HUDCO Bhawan  
Lodhi Road, New Delhi

PAN : AAACH 0632 A

[Appellant]

[Respondent]

**Date of Hearing : 01.09.2021**

**Date of Pronouncement : 01.09.2021**

Assessee by : Shri Gagan Kumar, Adv

Revenue by : Ms Sunita Singh, CIT- DR  
Shri Rajesh Kumar, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

The above two separate appeals by the Revenue are preferred against the order of the Commissioner of Income Tax [Appeals] - 35, New Delhi dated 15.12.2017 pertaining to Assessment Years 2006-07 and 2007-08 respectively.

2. Since both the appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in both these appeals relate to the deletion of penalty levied u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] amounting to Rs. 3,81,61,550/- in A.Y 2006-07 and Rs. 2,58,49,796/- in A.Y 2007-08.

3. At the very outset, the ld. counsel for the assessee brought to our notice that the quarrel has already been settled by this Tribunal in A.Ys 2009-10 and 2005-06 in favour of the assessee and against the Revenue.

4. The ld. DR could not bring any distinguishing decision in favour of the Revenue.

5. We have carefully perused the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. On identical set of facts, penalty u/s 271(1)(c) of the Act was levied in A.Ys 2009-10 and 2005-06 and the quarrel travelled upto the Tribunal

and the Tribunal in ITA Nos. 2004 and 2000/DEL/2018 for A.Ys 2009-10 and 2005-06 vide order dated 25.08.2021 held as under:

"7. We have heard the rival submissions and perused the materials available on record. The issue in the present appeal is with respect to the levy of penalty u/s 271(1)(c) of the Act. It is an undisputed fact that AO has levied penalty u/s 271(1)(c) of the Act on three issues stated in Para - 4 (i), ii) & (iii) hereinabove. On all the aforesaid three issues on which AO had levied penalty u/s 271(1)(c) of the Act, we find that the issues were carried by the assessee before the Hon'ble High Court & the Hon'ble High Court had admitted the appeal of assessee holding it to be substantial question of law. We find the Hon'ble High Court in the case of PCIT vs. Harsh International (supra) has held that if the quantum order itself has been challenged and the court has framed substantial questions of law in the appeal preferred by the assessee, it shows that the alleged concealment is not final and the issue is disputable and in such cases, the penalty levied by the Assessing Officer cannot survive. Apart from the aforesaid, we are also find that CIT(A) while deleting the penalty has observed that there was no concealment of the particulars of income nor assessee has furnished inaccurate particulars of income and therefore the penalty was not leviable. Before us, no fallacy in the findings of CIT(A) has been pointed out by the Revenue nor has Revenue placed on record any contrary binding decision in its support. In view of the aforesaid facts, we find no reason to interfere to the order of CIT(A) and thus the appeal of the Revenue is dismissed."

6. Respectfully following the decision of this Tribunal [supra], both the appeals of the Revenue are dismissed.

7. In the result, both the appeals filed by the Revenue in ITA Nos. 2001 & 2002/DEL/2018 are dismissed.

The order is pronounced in the open court on 01.09.2021 in the presence of both the rival representatives.

Sd/-

**[KULDIP SINGH]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 01<sup>st</sup> September, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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