

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A", NEW DELHI  
(THROUGH VIDEO CONFERENCE)  
BEFORE HON'BLE JUSTICE P.P. BHATT, PRESIDENT  
AND  
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT

ITA NO. 5731/DEL/2019		
A.Y. : 2010-11		
MANOJ KUMAR C/O TUSHAR GARG & ASSOCIATES (CA), A-5/240, FF, PASCHIM VIHAR, NEW DELHI – 110 063 (PAN: AGQPK1786P)	Vs.	ACIT, CIRCLE 62(1), NEW DELHI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by : Sh. J.S. Kochar, CA  
Department by : Sh. M. Barnwal, Sr. DR.

**ORDER**

**PER JUSTICE P.P. BHATT:**

This appeal filed by the Assessee is directed against the impugned order dated 16.4.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-20, New Delhi , pertaining to assessment year 2010-11.

2. At the time of hearing, Ld. Authorised Representative of the Assessee, Sh. J.S. Kochar, CA stated that the assessment order on which the penalty has been imposed has already been quashed by the ITAT, 'C' Bench, New Delhi vide its order dated 24.02.2020 passed in ITA No. 1627/DEL/2016 (AY 2010-11) in assessee's quantum appeal. For the sake of convenience, he filed the copy of the aforesaid Tribunal's order dated 24.02.2020. Therefore, he requested

that since the assessment has already been quashed by the Tribunal vide its aforesaid order dated 24.2.2020, hence, the penalty in dispute is not sustainable in the eyes of law and may be deleted accordingly.

3. On the other hand, Ld. Sr. DR has not raised any objection on the request of the Ld. A.R. for the assessee.

4. We have heard both the parties and perused the orders of the authorities below and the order of the ITAT passed in assessee's quantum appeal, wherein the ITAT, 'C' Bench, New Delhi vide its order dated 24.02.2020 passed in ITA No. 1627/DEL/2016 (AY 2010-11) has already quashed the assessment by holding as under:-

*".....3.13 Thus, respectfully following the finding of the Hon'ble Delhi High Court, we hold that the notice dated 01.09.2011 issued by the CIT, Circle-37(1) was without jurisdiction and, thus, it was invalid and the notice dated 30.8.2012 issued by the ITO, Ward 38(2), New Delhi issued by the correct Jurisdictional Officer, was beyond the period of limitation and therefore, this was also invalid. Thus, assessment order passed without acquiring the correct jurisdiction for a scrutiny by way of notice under section 143(2) is void ab initio and thus we quash the same. As we have already quashed, the assessment order we are not adjudicating on the issue raised on merit of the addition.*

*4. In the result, the appeal of the assessee is allowed."*

4.1 After perusing the aforesaid findings of the Tribunal in assessee's appeal, wherein assessment has already been quashed on which the penalty

has been imposed, hence, the penalty in dispute is not sustainable in the eyes of law, therefore, the same is deleted as such.

5. In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in the Open Court on 08-01-2021.

Sd/-

**(G.S. PANNU)**  
**VICE PRESIDENT**

Sd/-

**(JUSTICE P.P. BHATT)**  
**PRESIDENT**

**“SRB”**

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

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By Order,

Assistant Registrar, ITAT, Delhi Benches

