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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC011422292018

+ **W.P.(C) 5857/2018**

SAMTEL INDIA LIMITED

.....Petitioner

Through: **Mr. Vaibhav Kulkarni, Advocate.**

versus

PRINCIPAL COMMISSIONER OF INCOME TAX, & ORS.

.....Respondents

Through: **Mr. Vipul Agarwal, SSC along with
Ms. Harshita Kotru and Mr. Gooraang
Ranjan, Advocates.**

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **24.08.2026**

1. By way of the present writ petition, the petitioner has challenged the order dated 18.01.2018 passed by the Principal Commissioner of the Income Tax Delhi-8 (*hereinafter referred to as 'PCIT'*), under Section 264 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*), whereby the petitioner's revision application under Section 264 of the Act of 1961, against the penalty order dated 31.03.2016 passed by the Assistant Commissioner of Income Tax (*hereinafter referred to as 'ACIT'*) under Section 271(1)(c) of the Act of 1961, was set aside.
2. The facts, briefly narrated, are that for Assessment Year (AY) 2007-08, the assessment order under Section 143(3) of the Act of 1961, was passed by



the Assessing Officer (AO) on 09.12.2009, whereafter proceedings under Section 148 of the Act of 1961, were initiated against the petitioner and by way of assessment order dated 27.12.2013 passed under Section 143(3)/147 of the Act of 1961, demand was raised, which was unsuccessfully challenged by the assessee before the Commissioner of Income Tax (Appeal)-8 (*hereinafter referred to as 'CIT(A)'*) *vide* order dated 27.01.2015. Thereafter, the petitioner preferred an appeal before the Income Tax Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*), which was allowed by the Tribunal *vide* its order dated 12.02.2025, whereby the Tribunal held that the reassessment proceedings were illegal, as the petitioner's regular assessment was made under Section 143(3) of the Act of 1961 and the AO's action was based on a mere change of opinion.

3. In the meantime, the AO initiated penalty proceedings as well and passed an order dated 22.07.2015, against which the petitioner preferred a revision application under Section 264 of the Act of 1961. Said revision was rejected by the PCIT *vide* order 18.01.2018, against which the present writ petition under Article 226/227 of the Constitution of India, has been preferred.

4. Initially, when writ petition was filed, the above referred order of the Tribunal dated 12.02.2025 was not on record and the same came to be placed on record subsequently, by way of additional affidavit/additional document.

5. Learned counsel for the petitioner submitted that by order dated 12.02.2025, the Tribunal has allowed the petitioner's appeal, and since the assessment order itself has been set aside and the reassessment proceedings have been held to be contrary to law, the penalty proceedings and consequential penalty order, which is directly dependent upon the assessment



order are also liable to be quashed. He submitted that the penalty order is not only incidental, but totally dependent upon the assessment order, and once, the assessment order and the basic additions goes, the penalty has to go. In this regard, learned counsel relied upon judgment of Hon'ble the Supreme Court rendered in case ***K.C. Builders vs. Assistant Commissioner of Income Tax, (2004) 265 ITR 562*** particularly, para nos. 14 and 27.

6. Mr. Vipul Agarwal, learned Senior Standing Counsel for the Department, on the other hand, submitted that true it is, that the Tribunal has set aside the assessment order and has held the proceedings to be contrary to law. But, since the assessment order has been set aside on technical ground, the penalty proceedings *per-se* cannot be held to be declared contrary to law. He added that the penalty has been imposed upon petitioner for furnishing inaccurate particulars.

7. He argued that the finding of the AO about the particulars being inaccurate is conclusive, in so far as penalty proceedings are concerned, they were well within the period of limitation and within the four corners of law. He also argued that the order of the Tribunal has not been tested before the High Court, as the amount involved was below the monetary limits prescribed by the Central Board of Direct Taxes (*hereinafter referred to as 'CBDT'*), and therefore, the penalty order cannot be and should not be interfered with.

8. Having heard learned counsel for the parties, we are of the view that the fact that the assessment order has been set aside on technical ground or otherwise, is a fact, undisputed and the same has attained finality. According to us, since the assessment order has been set aside, the AO's invocation of jurisdiction contained in the assessment order, 'that it is a fit case for initiation of penalty proceedings', has lost its ground. Once the foundational fact



regarding initiation of penalty proceedings has lost its feet, penalty proceedings which might have culminated into order of penalty and affirmed by the order of the PCIT, passed under Section 264 of the Act of 1961, the same cannot clear the legal scrutiny. Our afore view is fortified by the judgment of **K.C. Builders (supra)**. We deem to appropriate to reproduce para no. 14 and 27 of the judgment of **K.C. Builders (supra)**, below:

“14. ... The word "concealment" inherently carried with it the element of mens rea. Therefore, the mere fact that some figure or some particulars have been disclosed by itself, even if takes out the case from the purview of non-disclosure, it cannot by itself take out the case from the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of tax thereon. In order that a penalty under section 271(1) (iii) may be imposed, it has to be proved that the assessee has consciously made the concealment or furnished inaccurate particulars of his income. Where the additions made in the assessment order, on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment and, therefore, in such a case no such penalty can survive and the same is liable



to be cancelled as in the instant case. Ordinarily, penalty cannot stand if the assessment itself is set aside. Where an order of assessment or reassessment on the basis of which penalty has been levied on the assessee has itself been finally set aside or cancelled by the Tribunal or otherwise, the penalty cannot stand by itself and the same is liable to be cancelled as in the instant case ordered by the Tribunal and later cancellation of penalty by the authorities. ...

9. In view of the above, we have discussed hereinabove, so also, what has been held by Hon'ble the Supreme Court in the case of ***K.C. Builders (supra)***, the writ petition allowed. The impugned penalty order dated 31.03.2016 so also the order dated 18.01.2018 of the Revisional Authority are hereby quashed and set aside.
10. All pending application(s), stand disposed of.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

AUGUST 24, 2026/v