

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “F”, MUMBAI  
BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No.379/Mum/2014**

**Assessment Year: 2009-10**

M/s Fusion India Project Management Pvt. Ltd. 43/49, 2 <sup>nd</sup> Cross, Promenade Road, Bangalore-560005 <b>PAN: AABCF1864D</b>	Vs.	ACIT Company Circle-6(2), Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Anil Kumar Bhandari

Revenue by : Shri G.M.Doss (DR)

Date of hearing : 02.12.2015

Date of Pronouncement : 31.12.2015

**ORDER**

**PER PAWAN SINGH, JM:**

1. The present appeal is filed by the assessee against the order of CIT(A)-12, Mumbai dated 07.10.2013 wherein the penalty order passed by the Assessing Officer (AO) u/s 271(1)(c) of the Act was upheld.
2. The brief fact of the case are that the assessee has filed return of income on 30.09.2009, for Assessment Year (AY) 2009-10 declaring Nil income, by claiming loss of Rs. 4,41,09,738/- and thereafter filed revised return twice i.e. on 15.03.2010 and 14.01.2010, respectively and the loss from initial figure of Rs. 4,41,09,738/- to Rs. 2,90,90,334/- was shown. The return of income was processed u/s 143(1) on 31.10.2010 and subsequently taken for scrutiny and assessment order u/s 143(3) was

passed on 05.12.2011, determining the total income of loss of Rs. 2,18,98,066/- by making addition of doubtful debts of Rs. 71,92,268/- , which the assessee has not added back to the total income.

3. Against the order of assessment, assessee has not preferred any appeal and thus the AO form his opinion for initiating penalty on 05.12.2011, for furnishing inaccurate particular of income on account of doubtful debts and inflicted a penalty of Rs. 22,22,410/- in its order dated 30.05.2012, against which the appeal was preferred before the CIT(A).
4. The CIT(A) while dealing with the appeal upheld the penalty and dismissed the appeal in its order dated 07.10.2013 against which the present appeal is filed before us.
5. We have heard the Authorised Representative (AR) and Departmental Representative (DR) of the revenue and perused the material available on record.
6. The AR of the assessee has argued that in fact the tax return preparer and computed the loss for the relevant AY and duly added back the admissible items and inadvertently omitted to add back the provisions of BDS amounting to Rs. 71,92,268/- although all its full particulars had been disclosed in the audited financial statement of the assessee and during the assessment proceeding the representative of assessee voluntarily consented for provision of bad debts and the loss was recomputed at Rs. 2,18,98,066/-, hence there was no concealment of fact nor inaccurate particular filed before the AO, and the AO as well as the First Appellate Authority (FAA) failed to properly appreciate the fact of the case.
7. We have perused the assessment order dated 05.12.2011, wherein the AO in para 5 of its order has observed that in Profit & Loss A/c, the assessee has debited provisions of debt amounting to Rs. 71,92,268/- and after considering the explanation attached to section 36(1)(vii) the amount of debt was added back to the total income of the assessee and the total loss of assessee was assessed Rs. 2,18,98,066/- (2,90,90,334 – 71,92,268 = 2,18,98,066/-).
8. The AR of the assessee further relied upon the case titled as CIT vs. ECS Ltd. reported viz. (2010) 194 taxman 311/336 ITR 162 and CIT vs. Zoom Communication Pvt. Ltd. reported vide 327 ITR 510 (Del.) wherein the Hon'ble Delhi High Court in both the matters has considered that:

*'so long as assessee has not concealed any material fact or any factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty u/s 271(1)(c), even if claim made by him is*

*unsustainable in law provided that he either substantial explanation offered by him or explained even if not substantiated is found to be bonafide. Even if the assessee make a claim which is not only incorrect in law, but is wholly without any basis and explained furnished by him for making such claim is not found to be bonafide is not liable to penalty for concealment of income'.*

9. We find that in the present case the assessee has merely due to inadvertent omission added back the bad debts of Rs. 71,92,261/- though it was disclosed in the audited financial statement, hence there was no concealment of fact by the assessee and the order dated 30.05.2012 passed by AO is total misconceived and the same is set-aside.
10. In the result, the appeal filed by the assessee is accepted.

Order pronounced in the open court on this 31<sup>st</sup> December 2015.

Sd-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 31 /12/2015

S.K.PS

**आदेशकीप्रतिलिपिअग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

Sd-

(PAWAN SINGH)

JUDICIAL MEMBER

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार

(Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai