

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'एच' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH,
MUMBAI

श्री डी. करुणाकरराव , लेखकसदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI D.KARUNAKARA.RAO, AM AND
SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 2781& I.T.A. 2782/Mum/2014
(निर्धारण वर्ष / Assessment Year:2007-08 & 2008-09)

M/s. Hicons Developers B-201, Leo Apartment, 24 th Road, Kohinoor CHS, Khar (W), Mumbai - 400052	बनाम/ Vs.	Deputy Commissioner of Income Tax, Central Circle – 36 Aayakar Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEFH3282M		
(पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri M.C.Omi Ningshen	

सुनवाई की तारीख / Date of Hearing: 12.01.2017
घोषणा की तारीख /Date of Pronouncement: 31.03.2017

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the order dated 17.02.2014 passed by the Commissioner of Income Tax (Appeals)-39, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2007-08 & 2008-09.

ITA NO.2781/Mum/2014 (A.Y.2007-08)

2. The assessee has raised the following grounds:-

- “a) *by wrongly holding:*
1. *That the appellant has concealed its income by not filing the return of income and ignorance of law cannot be taken as a plea to escape from tax liability.*
 2. *That the provisions of section 271(1)(c) were invited by the assessee at the inception itself by not filing the return of income within the due date.*
 3. *That penalty was levied not only on the addition made in the assessment but also on the income declared by the assessee in its return of income.*
 4. *That even in the return of income filed in response to notice under section 153A of the I.T.Act, 1961, the appellant firm did not disclose the income in respect of cash transaction found during the course of the search.*
 5. *That the WIP was underestimated and various cash expenses have not been included in the WIP.*
 6. *Holding that since the Income Tax Return is filed after the search, the appellant has concealed the particulars of income or furnished in accurate particulars of income which will rank for imposition of penalty under section 271(1)(c) of the Income Tax Act, 1961.*
- b) *In not considering the fact that the appellant firm had acted on and relied upon professional advice given to them to disclose the income of the entire project on completion method.*
- c) *In not considering the fact that the entire receipts were disclosed in the year the project was completed and there is no question of non disclosure of receipts in this year as the income of the current year was completed on the basis of adopting an estimated percentage on the work carried out during the year.*
- d) *In not considering that the addition to the income returned was on account of estimating a higher rate of profit and on account of disallowance of expenses under section 40A(3) of the Income Tax Act, 1961.*

Hence, the penalty levied of Rs.23,88,666/- may be please be cancelled.

3. The brief facts of the case are that the assessee firm was formed on 11.11.2005. The assessee did not file its original return of income for the A.Y.2007-08 u/s.139(1) of the Income Tax Act, 1961 (in short “the Act”). A survey action u/s.133A of the Act was conducted on 27.02.2007. During the course of survey the assessee firm made total declaration of Rs.78,85,400/- for A.Y.2006-07 and 2007-08. The assessee declared an amount of Rs.78,85,400/- during the course of survey action out of which Rs.12.5 lakhs was offered as cash introduction for A.Y.2006-07 and balance of Rs.66,35,400/- was to be offered for A.Y.2007-08. A search and seizure operation was carried out u/s.132 of the Act in Hicons and Pranay Group of cases on 24.02.2009 including the assessee and the case of the assessee firm was centralized. In response to the notice u/s.153A of the Act dated 04.01.2010, the assessee filed the return of income on 08.02.2010 declaring total income to the tune of Rs.54,42,961/-. In response to the notice u/s.153A of the Act, the WIP of the two projects of the assessee firm namely ‘Las-Fonte’ and ‘Las-Marque’ were shown at Rs.14,72,68,990/- and Rs.10,08,96,264/- respectively. On account of search and seizure action the Assessing Officer assessed the WIP of ‘Las-Fonte’ and ‘Las-Marque’ projects to the tune of Rs.18,69,58,138/- & Rs.14,98,51,611/- respectively. The Assessing Officer also initiated the penalty u/s.271(1)(c) of the Act on the fact that the assessee had filed return of income declaring income to the tune of Rs.54,42,961/- for A.Y.2007-08 after due date and that too after search action. Thereafter a show-cause notice was given after

receiving the reply of the assessee the Assessing Officer levied the penalty to the tune of Rs.23,88,666/-. Feeling aggrieved the assessee has filed an appeal before the CIT(A) who confirmed the said order, therefore, the assessee has filed the present appeal before us.

ISSUE NO.(a) to (d):-

4. All the issues are interconnected, therefore are being taken up together for adjudication. In brief in all the issues the assessee has challenged the penalty levied by the Assessing Officer to the tune of Rs.23,88,666/-. It is a matter of record that the assessee did not file its original return of income for the A.Y.2007-08 u/s.139(1) of the Act. A search and seizure action was taken u/s.132 of the Act Hicons and Pranay Group of cases on 24.02.2009 and on the basis of documents on record the income of the assessee was centralized, therefore notice u/s.153A of the Act was served upon the assessee on 04.01.2010. In response to the notice u/s.153A of the Act dated 04.01.2010 return of income was filed by the assessee on 08.02.2010 declaring total income to the tune of Rs.54,42,961/-.

5. Thereafter, the notice u/s.153A of the Act was issued and the WIP of the two projects of the assessee firm namely 'Las-Fonte' and 'Las-Marque' were determined at Rs.14,72,68,990/- and Rs.10,08,96,264/- respectively. The income was assessed to the tune of Rs.54,42,961/-. Since the assessee filed the return of income of the A.Y.2007-08 after the search and seizure action specifically in view of the notice u/s.153A of the Act. Therefore, the revenue was of the view that the assessee concealed the particulars of

income of Rs.54,42,961/-and levied the penalty to the tune of Rs.23,88,666/-. At the time of hearing the revenue filed the letter dated 03.01.2017 in which it is specifically explained that the assessee did not file the appeal against the quantum before the CIT(A) and before the Hon'ble Income Tax Appellate Tribunal available on record. This letter has not been controverted by the representative of the assessee meaning thereby the facts of non furnishing the return u/s.139(1) of the Act was admitted and it is not in dispute that the assessee filed the return of income after service of the notice u/s.153A of the Act.

6. Since the quantum has not been challenged by the assessee and the factual position is not disputed, therefore, in the said circumstances we are of the view that the CIT(A) has passed the order dated 17.02.2014 judiciously and correctly which is not required to be interfere with at this appellate stage. Therefore, we confirmed the order passed by the CIT(A) and dismissed the appeal of the assessee. Accordingly, these issues are decided in favour of the revenue against the assessee.

7. In the result, the appeal filed by the **assessee is hereby ordered to be Dismissed.**

ITA NO.2782/Mum/2014 (A.Y.2008-09)

8. The assessee has raised the following grounds:-

- “a) *by wrongly holding:*
1. *That the appellant has concealed its income by not filing the return of income and ignorance of law cannot be taken as a plea to escape from tax liability.*

2. *That the provisions of section of section 271(1)(c) were invited by the assessee at the inception itself by not finding the return of income within the due date.*
 3. *That penalty was levied not only on addition made in the assessment but also on the income declared by the assessee in its return of income.*
 4. *That even in the return of income filed in response to notice under section 153A of the I.T.Act, 1961, the appellant firm did not disclose the income in respect of cash transactions found during the course of the search.*
 5. *That the WIP was underestimated and various cash expenses have not been included in the WIP.*
 6. *Holding that since the income tax return is filed after the search, the appellant has concealed the particulars of income or furnished inaccurate particulars of income which will rank for imposition of penalty under section 271(1) of the Income Tax Act, 1961*
- b) *In not considering the fact that the appellant firm had acted on and relied upon professional advice given to them to disclose the income of the entire project on completion method.*
 - c) *In not considering the fact that the entire receipts were disclosed in the year the project was completed and there is no question of non disclosure of receipts in this year as the income of the current year was computed on the basis of adopting an estimated percentage on the work carried out during the year.*
 - d) *In not considering that the addition to the income returned was on account of estimating a higher rate of profit and on account of disallowance of expenses under section 40A(3) of the Income Tax Act, 1961.*

Hence, the penalty levied of Rs.12,68,986/- may please be cancelled.

9. The brief facts of the case are that the assessee firm was formed on 11.11.2005. The assessee did not file the return of income for A.Y.2008-09 u/s.139(1) of the Act. A search and seizure operation was carried out u/s.132 of the Act in Hicons and Pranay Group of cases including the assessee firm on 24.02.2009 and the case of the assessee firm was centralized. In response to the notice u/s.153A of the Act dated 04.01.2010 return of income was filed by the assessee on 08.02.2010 declaring total income to the tune of Rs.20,85,540/-. The assessee shown the WIP of the two projects namely 'Las-Fonte' and 'Las-Marque' at Rs.27,41,78,220/- and Rs.18,54,01,263/-. Based upon the findings of the search action the Assessing Officer assessed the WIP of 'Las-Fonte' and 'Las-Marque' at Rs.27,41,78,220/- and Rs.18,54,01,263/- respectively. While making these additions to the WIP, the Assessing Officer initiated the penalty proceeding u/s.271(1)(c) of the Act. The Assessing Officer also initiated penalty proceedings u/s.271(1)(c) of the Act that assessee had filed return declaring income of Rs.20,85,540/- for A.Y.2008-09 after due date and that too after search action. Show cause notice dated 12.05.2011 was issued and after receipt of reply penalty to the tune of Rs.12,68,986/- was levied. Feeling aggrieved the assessee filed the appeal before the CIT(A) who confirmed the penalty, therefore the assessee has filed the present appeal before us.

ISSUE NO.(a) to (d):-

10. All the issues are interconnected, therefore are being taken up together for adjudication. In brief in all the issues the assessee has

challenged the penalty levied by the Assessing Officer to the tune of Rs.12,68,986/-. It is a matter of record that the assessee did not file its original return of income for the A.Y.2008-09 u/s.139(1) of the Act. A search and seizure action was taken u/s.132 of the Act Hicons and Pranay Group of cases on 24.02.2009 and on the basis of documents on record the income of the assessee was centralized on 02.12.2009, therefore notice u/s.153A of the Act was served upon the assessee on 04.01.2010. In response to the notice u/s.153A of the Act dated 04.01.2010 the return of income was filed by the assessee on 08.02.2010 declaring total income to the tune of Rs.20,85,540/-.

11. Thereafter, the notice u/s.153A of the Act was issued and served and the WIP of the two projects of the assessee firm namely 'Las-Fonte' and 'Las-Marque' were assessed at Rs.23,22,07,515/- and Rs.13,57,85,834/- respectively. The income was assessed to the tune of Rs.41,06,750/-. Since the assessee filed the return of income of the A.Y.2008-09 after the search and seizure action specifically in view of the notice u/s.153A of the Act. Therefore, the revenue was of the view that the assessee concealed the particulars of income of Rs.41,06,750/- and levied the penalty to the tune of Rs.12,68,986/-. At the time of hearing the revenue filed the letter dated 03.01.2017 in which it is specifically explained that the assessee did not file the appeal against the quantum before the CIT(A) and the Hon'ble Income Tax Appellate Tribunal available on record. This letter has not been controverted by the representative of the assessee being ex-parte meaning thereby the facts of non furnishing the return u/s.139(1) of the Act was

admitted and it is not in dispute that the assessee filed the return of income after service of the notice u/s.153A of the Act.

12. Since the quantum has not been challenged by the assessee and the factual position on record is not in dispute, therefore, in the said circumstances we are of the view that the CIT(A) has passed the order dated 17.02.2014 judiciously and correctly which is not required to be interfere with at this appellate stage. Therefore, we confirmed the order passed by the CIT(A) and dismissed the appeal of the assessee. Accordingly, these issues are decided in favour of the revenue against the assessee.

13. In the result, the appeal filed by the **assessee is hereby ordered to be Dismissed.**

14. In the result, both the appeals filed by the **assessee are hereby ordered to be Dismissed.**

Order pronounced in the open court on 31st March, 2017.

Sd/-

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31st मार्च, 2017

MP

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**