

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**

**BEFORE SHRI G.S. PANNU, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.6041/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

Klassic Constructions P. Ltd. Bhasin House, Unique, Co op HSG SO Behind Pratap Nagar Seven Bungalow, Andheri(W) Mumbai Pin:400058	<b>बनाम/</b> Vs.	DCIT 8(2)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCK1453H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Uma Mahadeokar (AR)	
Revenue by:	Shri Saurabh Despande(DR)	

सुनवाई की तारीख / Date of Hearing: 17.08.2017

घोषणा की तारीख /Date of Pronouncement: 08.11.2017

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 31.07.2013 passed by the Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2009-10 wherein the penalty levied by the AO to the tune of Rs.11,46,911/- has been confirmed.

2. The assessee has raised the following grounds:-

*“Being aggrieved by the order of the DCIT 8(2) Mumbai, hereafter referred to as the AU, your appellant submits the following grounds of appeal for your sympathetic consideration:*

*1 The learned AC) erred in levying penalty this 271(1)(C) of the Income Tax Act 1964 amounting to Rs 11,46 91 11 being 100% of tax sought to be evaded by your appellant Your appellant humbly prays that the said penalty of RS 11,46 94 4(- be deleted*

*2 The learned AO erred in coming to the conclusion that your appellant had deliberately and consciously attempted to conceal the true particulars of its income and evaded payment of tax thereon.*

*He ought to have appreciated that all the relevant facts and records were produced before the income tax authorities at various stages of assessment proceedings. On these facts and under the circumstances there was no concealment as contemplated under Sec 271(1)(c) Income Tax Act 1961.*

*3 Without prejudice to the above it is humbly submitted that the learned AO has not taken into consideration the fact that making a wrong claim by itself does not call for initiation of penalty proceedings in the absence of any concealment on the part of your appellant*

*4 Without prejudice to the above it is humbly submitted that the learned AU has not recorded in the assessment order u/s 443(3) of the Income tax act 1961 his satisfaction that your appellant had concealed any income or furnished inaccurate particulars of income.*

*Hence these proceedings initiated u/s 271 (1)(c) Income Tax Act 1961 are bad in law and need to be quashed.*

*5 Without prejudice to the above its humbly submitted that the learned AG has not issued fresh notice which was served on your appellant before levying penalty and hence these proceedings initiated as sec 271(1)(c) Income Tax Act 1961 are bad in law and need to be quashed.*

*6 Without prejudice to the above it is humbly submitted that the learned AG has not considered the explanation given by your appellant and without verifying the facts furnished by your appellant arrived at the conclusion that your appellant was liable to penalty u/s Sec 271 (1)(c ) Income Tax Act 1961 The learned AU has based the penalty order only on assumptions without establishing the fact of concealment with any clinching evidence which ordinarily is required before levy of penalty.*

*Your appellant craves for leave to add, amend, alter, modify and/or delete all or any one or more of the above said grounds of appeal if necessary.”*

3. The brief facts of the case are that the assessee filed its return income on 30.09.2009 for the A.Y. 2009-10 declaring total income to the tune of Rs.1,96,58,480/-. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny and notice u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. Thereafter, the assessment u/s143(3) of the Act was completed on 23.12.2011 determining total income to the tune of Rs.2,33,28,140/-. The Assessing Officer initiated the proceeding 271(1)(c) of the Act on account of addition in connection with difference as per AIR data vis-à-vis Profit & Loss Account in respect of parties i.e. State Bank of India, Central Bank of India, Gail India, Goa State Infrastructure Development Corporation Limited & Nashik Engineering Cluster to the tune of Rs.28,92,582. The assessee has claimed deduction u/s 35D of the Act to the tune of Rs.3,64,632/- was disallowed and added to the income of the assessee. It was also found that the assessee claimed penalty charges to the tune of Rs.3,64,632/- in the P & L Account which was leviable on account of the said disallowance. The penalty was initiated and the Assessing Officer levied the penalty after issuing the notice to the tune of Rs.1,51,632/- which was confirmed by the CIT(A), therefore, the assessee filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. In view of the

assessment order 23.12.2011, we noticed that the Assessing Officer added the difference in the AIR data vis-à-vis P&L Account in respect of five parties i.e. State Bank of India, Central Bank of India, Gail India, Goa State Infrastructure Development Corporation Limited & Nashik Engineering Cluster total income to the tune of Rs. 28,92,582/-. Subsequently, the claim of the assessee was declined u/s 35D of the Act, 1961 to the tune of Rs.3,64,632/-. Firstly, the assessee claimed penalty expenses to the tune of Rs.1,26,000/- which was disallowed. The penalty was initiated on account of said disallowance. Thereafter, penalty was levied in view of the provision u/s 271(1)(c) of the Act on furnishing the inaccurate particulars and concealment of income. In view of the record, we noticed that the assessee nowhere concealed any particulars income nor furnished inaccurate particulars of income. Rejection of the claim of the assessee nowhere attract the penalty in view of the provision u/s 271(1)(c) of the Act. In this regard, we also find support of law **CIT Vs. Reliance Petro Product P. Ltd. (2010) 322 ITR 158 (SC)**. In view of the said circumstances, we are of the view that the finding of the CIT(A) is wrong against law and facts and is not liable to be sustainable in the eyes of law. Therefore, we set aside the finding of the CIT(A) and delete the penalty.

**5. In the result, the appeal filed by the assessee is hereby ordered to be allowed.**

Order pronounced in the open court on 08.11.2017

Sd/-

Sd/-

(G.S. PANNU)

लेखा सदस्य / ACCOUNTANT MEMBER

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 08. 11. 2017

V.P.Singh

आदेश की प्रतिलिपि अग्रेषित/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