



ITA No. 3300/Mum/2016
Piramal Enterprises Limited
Assessment Year 2003-04

आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 3300/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2003-04)

Piramal Enterprises Limited [As successors to BMK Laboratories Private Limited] Piramal Tower Ganpatrao Kadam Marg Lower Parel Mumbai – 400 013	बनाम/ Vs.	Deputy Commissioner Of Income-tax 10(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACB-1747-N		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ronak G Doshi, Ld. AR
Revenue by	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	25/01/2018
घोषणा की तारीख / Date of Pronouncement	:	31 /01/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2003-04 contest the order of Ld. Commissioner of Income-Tax (Appeals)-24 [CIT(A)], Mumbai, *Appeal No. CIT(A)-22/DCIT 10(3)/IT-179/14-15* dated 12/02/2016 *qua* confirmation of penalty u/s 271(1)(c) for Rs.20 Lacs. The quantum assessment for impugned AY was framed on



30/12/2005 by *Ld. Deputy Commissioner of Income Tax-10(3), Mumbai [AO] u/s 143(3)* whereas penalty has been levied vide order dated 31/07/2014.

2. Facts leading to imposition of penalty are that the erstwhile assessee namely *BMK Laboratories Pvt. Ltd.* was saddled with quantum additions aggregating to Rs.53.11 Lacs on account of *excess interest, stamp duty & staff cost* in an assessment u/s 143(3) against which the penalty proceedings were initiated in the quantum order. Consequently, the assessee has been saddled with penalty of Rs.20 Lacs against the same u/s 271(1)(C). Upon confirmation by *Ld. first appellate authority*, the same is being contested before us by way of this appeal.

3. The *Ld. Authorized Representative* for the assessee [AR], at the outset, drew our attention to the fact that quantum additions have since been confirmed by this Tribunal vide ITA No.4443/Mum/2011 dated 31/12/2013. However, the assessee preferred further appeal against the same before Hon'ble Bombay High Court vide ITA No. 1038 of 2014 dated 09/12/2016 where the substantial question of law has been admitted by the Hon'ble Court. In view of the stated fact alone, *Ld. AR* placing reliance on judgment of Hon'ble Bombay High Court rendered in *CIT Vs. Advaita Estate Development Pvt. Ltd. [ITA No. 1498 of 2014 17/02/2017]* & *CIT Vs. Nayan Builders & Developers Pvt. Ltd. [ITA No. 415 of 2012 08/07/2014]* contended that the impugned penalty does not survive. The *Ld. Departmental Representative [DR]* could not controvert the same or bring on record any contrary judgment.

4. We have carefully perused the rival contentions and perused cited judicial pronouncements. Undisputedly, the substantial question of law



with respect to quantum additions, against which the penalty has been levied, has been admitted by the Hon'ble Bombay High Court. In such a situation, we find that the impugned penalty does not survive in view of the judgment of Hon'ble Bombay High Court rendered in *CIT Vs. Advaita Estate Development Pvt. Ltd. [supra]* where the Hon'ble Court, after considering the decisions rendered in *CIT Vs. Nayan Builders & Developers Pvt. Ltd. [supra]* & *CIT-8 Vs. Aditya Birla Power Co. Ltd. [ITA No. 851 of 2014 02/12/2015]* held as under:-

2. The Revenue urges the following question of law for our consideration:-

1. "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting the penalty imposed under section 271(1)(c)?"

3. The impugned order of the Tribunal allowed the respondent-assessee's appeal and deleted the penalty imposed. This on the ground that the order of the Tribunal in the quantum proceeding which was against respondent-assessee had been challenged in appeal before this Court and the appeal has been admitted on 12th March, 2013 being Income Tax Appeal No. 2582 of 2011 on the following substantial questions of law :

"(a) Whether on the facts and in the circumstances of case and in law, is the order of the Tribunal perverse inasmuch as it ignored the basic documents like Statement of Confirmation of Account, Bank Statement showing receipt of money from and payment of money to M/s.Kuber Developers Corporation and Confirmation from the said party of having given and receipt of the advance which were produced before the CIT(A) and the Tribunal while confirming the addition of Rs.2.73 crores under Section 68 of the Act in the hands of the Appellant ?"

(b) Whether on the facts and in the circumstances of the case and in law, was the Tribunal justified in not admitting the additional evidence of loan creditor. Mr. Mahendra Mansingh Arora in the form of Return of Income, Balance Sheet and Profit & Loss Account for Assessment Year 2006-07 filed before the I.T. Department on the ground that the same were not filed before the Respondent no.2 earlier without appreciating that the Appellant cannot be penalized for the default of loan creditor ?"

4. In the above view, the impugned order followed its decision in *Nayan Builders and Developers Pvt.Ltd. vs. The Income Tax Officer in Income Tax Appeal No. 2379/Mum/2009* rendered on 18th March, 2011 and the decision of the Delhi High Court in *CIT vs Liquid Investment and Trading Co (ITA No.240/2009)* rendered on 5th October, 2010 to hold that when an appeal has been admitted in quantum proceedings by the High Court, then that itself is an evidence of the issue being debatable, not warranting any penalty.



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5. The Revenue had filed an appeal from the order of the Tribunal in *Nayan Builders and Developers Pvt. Ltd. (supra)* deleting the penalty. This appeal being *CIT vs. Nayan Builders and Developers [(2014) 368 ITR 722]* was not entertained by this Court. It upheld the view of the Tribunal that the imposition of penalty was not justified as admission of appeal in quantum proceeding on this issue as substantial question of law was proof enough of the issue being debatable. The aforesaid decision in *Nayan Builders and Developers Pvt.Ltd (supra)* was also followed by this Court in *CIT-8 vs. Aditya Birla Power Co. Ltd. in Income Tax Appeal No. 851 of 2014* rendered on 2nd December, 2015.

6. However, Mr. Tejveer Singh, learned Counsel appearing for the appellant Revenue seeks to distinguish the decision of this Court in *Nayan Builders and Developers Pvt. Ltd. (supra)* on the ground that this Court had after recording the fact that where appeals from orders in quantum proceedings of this Court have been admitted as giving rise to substantial question of law then that itself discloses that the issue is debatable. However, Mr. Singh points out that it also further records "In our view there was no case made out for imposition of penalty and the same was rightly set aside.". On the basis of the above observation, it is contention of Mr. Tejveer Singh that the appeal from penalty proceeding was not admitted by this Court as on merits no case for imposition of penalty was made out.

7. Mr. Dalal, the learned Counsel for the respondent-assessee invited our attention to the order of the Tribunal dated 18th March, 2011 in the case of *Nayan Builders and Developers Pvt. Ltd (supra)*. On perusal of the Tribunal order dated 18th March, 2011 we note that the Tribunal in *Nayan Builders and Developers Pvt. Ltd (supra)* had deleted the penalty only on the ground that as substantial question of law had been admitted by this Court in quantum proceedings the issue is debatable. It was on the basis of the aforesaid reasoning of the Tribunal in *Nayan Builders and Developers Pvt.Ltd. (supra)*, that this Court held that no penalty is imposable. Thus the distinction sought to be made by Mr. Tejveer Singh does not assist the Revenue, as it does not exist.

8. In view of the decision taken by this Court in *Nayan Builders and Developers Pvt. Ltd (supra)* as well as in *Aditya Birla Power Co. Ltd. (supra)* the proposed question does not give rise to any substantial question of law. Thus not entertained.

9. Therefore, the Appeal is dismissed. No order as to costs.

Respectfully, following the ratio of above decision, we delete the impugned penalty. Needless to add that the revenue is free to re-initiate the same as per law on the basis of outcome of the quantum appeal. Since, the appeal has been allowed only on this point alone, further discussion on other grounds raised by assessee becomes merely academic in nature and we see no reason to delve into the same.

5. Resultantly, the assessee's appeal stands allowed.



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Order pronounced in the open court on 31st January, 2018

Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :31.01.2018
Sr.PS:- Thirumalesh

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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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