

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3391/MUM/2016
Assessment Year: 2009-10**

The ITO – 9(3)(4), 471, Aayakar Bhavan, 4 th Floor, M.K. Marg, Mumbai - 400020	Vs.	M/s Glowshine Builders & Developers Pvt. Ltd., CTS 49-44, Sahara India Point, S.V. Road, Goregaon (West), Mumbai – 400104 PAN: AAACG3422F
(Appellant)		(Respondent)

Revenue by : Shri Ram Tiwari (Sr. DR)

Assessee by : Ms. Purvi Gupta (AR)

Date of Hearing: 01/01/2018

Date of Pronouncement: 01/01/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 29.02.2016 passed by the Commissioner of Income Tax (Appeals-16, Mumbai, for the assessment year 2009-10, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against penalty order passed u/s 271 (1)(c) of the Income Tax Act, 1961 (for short 'the Act') and deleted the penalty.

2. In this case, the appellant company filed its return of income for the assessment year 2009-10 declaring nil income after claiming brought forward loss of Rs. 38,021/-. However, the AO determined the total income at Rs. 15,93,68,479/- by making addition on account of short term capital gain on sale of immovable property and accordingly initiated penalty u/s 271 (1) (c) of the Act for concealment of income. An order u/s 271 (1)(c) of the Act was

accordingly passed imposing penalty of Rs. 3,15,32,720/-. The addition made by AO was confirmed by the CIT (A) in the first appeal. However, the penalty was deleted by the ITAT, Mumbai vide order dated 14.04.2014. The assessee challenged the penalty order before the CIT (A). The CIT (A) allowed the appeal and deleted the penalty on the ground that in quantum appeal, the ITAT has deleted the addition sustained by the Ld. CIT (A). The revenue is in appeal against the said order by raising the following ground.

“Whether on the facts and in circumstances of the case, the Ld. CIT (A) erred in deleting the penalty levied u/s 271 (1)(c) whereas the AO rightly treated the short term capital gain on sale of development rights in the year of the transaction?”

3. At the very outset, the Ld. counsel for the assessee submitted that since the Tribunal has deleted the addition in quantum appeal ITA No 478/Mum/2013 and the order of the Tribunal has been affirmed by the Hon’ble High Court of Bombay in ITA No 1756 of, the penalty order does not survive. Therefore, the appeal of the revenue is liable to be dismissed.

4. The Ld. Departmental Representative (DR) did not controvert the facts submitted by the Ld. counsel for the assessee.

5. We have carefully perused the orders passed by the authorities below as well as the order passed by the co-ordinate Bench and the order of the Hon’ble High Court. The coordinate Bench of the Tribunal has deleted the addition sustained by the CIT (A) in ITA No. 478/Mum/2013 vide order dated 11.04.2014. The appeal against the findings of the coordinate Bench aforesaid has been affirmed by the Hon’ble High Court of Bombay in Income Tax Appeal No. 1756 of 2014 dated 09.04.2017. Under these circumstances, the impugned penalty order does not survive in this case. We accordingly uphold the findings of the Ld. CIT(A) and dismiss the sole ground of appeal of the revenue .

In the result, appeal filed by the revenue for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 1st.January, 2018.

Sd/-
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 01/01/2018

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra, PS

आदेश 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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