

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Amarjit Singh, Judicial Member**

ITA Nos. 391 & 392/Mum/2016
(Assessment Years: 2005-06 & 2006-07)

M/s. Puravankara Projects Ltd.
130/1, Ulsoor Road
Bangalore 560042

ACIT, Central Circle-2
Room No. 906, 9th Floor
Vs. Old CGO Bldg. Annexe
M.K. Road, Mumbai 400020

PAN – AAACP2550R

Appellant

Respondent

Appellant by: Shri Rajeev Wagley
Respondent by: Shri Rajat Mittal

Date of Hearing: 15.02.2018
Date of Pronouncement: 02.05.2018

ORDER

Per Shamim Yahya, AM

These are appeals by the assessee directed against the respective orders of the learned CIT(A) for the concerned assessment years against the levy of penalty under Section 271(1)(c) of the Income Tax Act (hereinafter "the Act") as under: -

A.Y.	Penalty
2005-06	₹2,12,74,580/-
2006-07	₹41,61,620/-

2. The assessee has also sought to raise common additional ground. The submissions in this regard read as under: -

"The Appellant humbly prays that this Hon'ble Tribunal be pleased to allow the Appellant to raise the following Additional Grounds of Appeal numbered as 6 & 7 after the Ground of Appeal No. 5 in the Original Grounds of Appeal:-

6. *Confirming the above penalty without appreciating the fact that in the notice dated 28.3.2014 issued u/s. 274 r.w.S. 271 of Income Tax*

Act, 1961, the relevant words i.e. concealment of income or furnishing of inaccurate particulars of income were not struck off & hence, the notice suffered from the vice of non-application of mind by the AO and was invalid. And hence, penalty U/s. 271(1)(C) could not be levied.

7. Confirming the penalty without appreciating the fact that the Appellant had to be made aware as to which of the two charges i.e. (a) for concealing the particulars of income or (b) furnishing inaccurate particulars of income are being put against him. And if it was not so, the notice was invalid and penalty u/s. 271(1)(C) could not be levied.

The Appellant states that the Additional Grounds sought to be raised now are the legal grounds which go to the root of the appeal. They also do not require any fresh investigation into the facts of the case, since the document in support of the above grounds of appeal i.e. notice u/s. 274 was already on the record before the lower authorities. They are purely legal grounds.”

3. We have heard both the counsels and perused the record. On the anvil of Hon'ble Apex Court decision in the case of NTPC we admit the additional ground.

4. Up on careful consideration, we note that this ground was never raised before the learned Commissioner of income tax appeals nor the same was ever raised at any time before the Assessing Officer in the penalty proceedings. We further find that the issue also needs reference to original records. Hence in our considered opinion in the interest of justice will be served if the additional ground now being raised is remitted to the file of learned CIT(A). The learned CIT(A) is directed to consider the additional ground and pass appropriate order on the ground so raised after giving the assessee an opportunity of being heard.

5. Since we have already remitted the additional ground which goes to the root of the matter, we are not considering the merits of the order passed by the learned CIT(A). It has been expounded by the Hon'ble Madras High Court in the case of Ramdas Pharmacy 77 ITR 276 that all issues arising in an appeal should be decided instead of deciding the issues in piecemeal manner. As deciding only part of the appeal leads to multiplication of proceedings at different levels and forums which is not desirable. After the order of learned CIT(A) is complete pursuant to our

remitting the additional ground as above it will be open to the parties to raise the grounds in appeal as and if deemed necessary.

6. In the result these appeals filed by the assessee stand allowed for statistical purposes.

7. Order pronounced in the open court on 2nd May, 2018.

Sd/-
(Amarjit Singh)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai, Dated: 2nd May, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -47, Mumbai*
4. *The Pr. CIT, Central-1, Mumbai*
5. *The DR, "C" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.