

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 353 /Ahd/2016
Assessment Year 2008-09

The DCIT, Circle-3(1), Baroda-390007 (Appellant)	Vs	M/s. Om Developers, 6, Sarvoday Society, Nr. Deluxe Society, Nizampura, Baroda-02 PAN: AABFO4011A (Respondent)
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Revenue by: Shri Saurabh Singh, Sr. D.R.
Assessee by: Ms. Kinjal Shah, A.R.

Date of hearing : 11-04-2018
Date of pronouncement : 16-05-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenue appeal for A.Y. 2008-09, arises from order of the CIT(A)-4, Vadodara dated 15-10-2015, in proceedings under section 271(1)(c) of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in deleting the penalty of Rs.28,25,782/- levied for furnishing inaccurate particulars of income by holding that the AO was not correct in levying the penalty though the quantum addition was confirmed by Ld. CIT(A).

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in ignoring the fact that the penalty is natural consequence once the quantum addition has been upheld by the CIT(A) and A.O. is bound to levy penalty within one year from the end of the year in which appellate order was received.”

3. The brief fact of the case is that assessee has filed return of income declaring total income of Rs. nil on 29th September, 2008. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 23rd August, 2009. During the course of scrutiny assessment, the assessing officer noticed that assessee has claimed deduction u/s. 80IB (10) of the act to the amount of Rs. 83,13,570/- on account of housing project. The assessing officer has disallowed the claim of deduction u/s. 80IB of the act on the ground that assessee firm has not fulfilled all the conditions stipulated in section 80IB of the act. The assessing officer has also initiated penalty proceedings for furnishing inaccurate particulars of income u/s. 271(1) (c) of the act on the disallowance made u/s 80IB of the act. The Id. CIT(A) has confirmed the disallowance of claim of deduction u/s. 80IB(10) of the act.

3.1 During the penalty proceedings, the assessing officer has stated that it is crystal clear that assessee has not fulfilled the basic condition i.e. ownership of land on which housing project was constructed and the approval of the local authority was not in the name of the assessee firm, therefore, the assessing officer has concluded that assessee has furnished inaccurate particulars of income leading to concealment of income and levied a penalty of Rs. 28,25,782/- u/s. 271(1)(c) of the act.

4. Aggrieved assessee filed appeal before the Id. CIT(A) against the levying of penalty by the assessing officer. The Id. CIT(A) has deleted the penalty levied by the assessing officer on the ground that the issues on which deduction 80IB(10) was disallowed by the assessing officer was highly debatable and under these circumstances penalty u/s. 271(1)(c) of the act cannot be sustained. During the course of appellate proceedings before us, Id. departmental representative has supported the order of assessing officer. On the other hand, Id. counsel has brought to our notice that the Co-ordinate Bench of the ITAT, Ahmedabad of the ITAT vide its decision in ITA no. 642/Ahd/2013 dated

15/03/2018 in the case of assessee itself has deleted the quantum addition made in the case of the assessee and contended that levying of penalty in the case of the assessee has become infructuous.

5. We have heard rival contentions and perused the material on record carefully. We have noticed that Co-ordinate Bench of ITAT vide ITA no. 642/Ahd/2013 dated 15/03/2018d has deleted the addition and allowed the claim of deduction u/s. 80IB(10) of the act . Since the quantum addition has been quashed by the decision of the Co-ordinate Bench of the Tribunal, therefore we consider that the impugned penalty in the case of the assessee has become infructuous. Accordingly, the appeal of the revenue is dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 16-05-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 16/05/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील[य आधकरण,
अहमदाबाद