

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.6194/Mum/2013, (A.Y. 2002-03)
ITA No.6195/Mum/2013, (A.Y. 2003-04)
ITA No.6196/Mum/2013, (A.Y. 2007-08)
ITA No.6201/Mum/2013, (A.Y. 2004-05)

Keystone Realtors Pvt. Ltd.
702, Natraj, M.V.Road Junction,
Western Express Highway,
Andheri(East), Mumbai 400 099
PAN: AAACK 2499Q

..... Appellant

Vs.

Asstt. Commissioner of Income Tax ,
Central Circle -10,
Aaykar Bhavan,M.K.Road,
Mumbai-400 020

..... Respondent

Appellant by : Shri Yogesh Joijode
Respondent by : Shri M.C.Omi Nigshen

Date of hearing : 04/07/2018
Date of pronouncement : 31/07/2018

ORDER

PER G.S.PANNU,A.M:

The captioned appeals filed by the assessee pertaining to assessment years 2002-03,2003-04, 2007-08 & 2004-05 are directed against a common order passed by CIT(A)-37, Mumbai dated 25/07/2013 which in turn arise out of penalty orders passed by the Assessing Officer

under section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') dated 20/03/2012.

2. The issue involved in these appeals are identical, except difference in figures, therefore, they have been heard together and a consolidated order is being passed for the sake of convenience and brevity. Since the issue involved is identical, ITA No.6194/Mum/2013 pertaining to assessment year 2002-03 is taken as the lead case. The Grounds raised by the assessee in this appeal read as under:-

" The Hon'ble Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT (A)") has erred in confirming the order of learned assessing officer (hereinafter referred as "A.O.") levying penalty of Rs.1,55,36,210/- U/s 271(1)(c) of Income Tax Act, 1961. It is submitted that during the original assessment proceedings U/s 143(3), deduction U/s 80IB(10) was allowed to the appellant however, in the reassessment proceedings U/s 143(3) r.w.s 147, claim of deduction U/s 80IB (10) was rejected. In view of the above, the deduction claimed of Rs. 3,54,25,711/- was not allowed.

Without prejudice, CIT (A) has erred in confirming the order of AO in levying penalty of Rs.1,55,36,210/- based on difference in tax liability as per original assessment of Rs.33,01,871/- as well as in tax liability as per reassessment of Rs.1,88,38,081/-. It is submitted that said calculation of penalty is not in accordance with basic principles of Law.

In view of the above, it is submitted that Penalty levied in these case is unwarranted and the same should be deleted."

3. The facts in brief are that the assessee is engaged in the business of builders and developers for the past several years. The assessee filed its original return of income for the assessment year 2002-03 on 31/10/2002 declaring a total income of 'Nil'. Thereafter on 31/03/2003 assessee filed revised return declaring income of Rs.3,81,265/-. The return was processed at the declared income and assessment under section 143(3)

was completed at Rs.3,91,266/- on 31/03/2005. The book profit was determined under section 115JB at Rs.3,58,06,980/-. Thereafter, it was noticed that the income of the assessee had escaped assessment. The assessee had claimed deduction under section 80IB(10) of the Act for the eligible projects and also for some projects which were not eligible for the same. The original assessment under section 143(3) of the Act was completed and the deduction was allowed. However, subsequently it was noticed by the subsequent Assessing Officer that the commencement certificates issued by the Competent Authority (i.e. B.M.C) for some of the projects included in the assessee's original claim of deduction under section 80B were prior to 01/10/98. Thus, these projects were ineligible for deduction under section 80IB(10) of the Act having commenced prior to 01/10/98. The Assessing Officer issued notice under section 147 of the Act and the assessment was completed by disallowing the claim made by the assessee under section 80IB(10) of the Act for the projects which commenced prior to 01/10/1998 and a penalty of Rs.1,55,36,210/-was imposed under section 271(1)(c) of the Act. The assessee carried matter in appeal before the CIT(A), who upheld the order of the Assessing Officer imposing penalty under section 271(1)(c) of the Act. Being aggrieved by the order of CIT(A), assessee is in appeal before the Tribunal.

4. At the time of hearing, the learned representative for the assessee pointed out that the assessee's appeal in quantum assessment proceedings has been allowed by the Tribunal vide its order in ITA Nos. 5527/Mum/2010 to 5531/Mum/2010 dated 11/08/2017 for assessment years 2002-03 to 2004-05 and 2006-07 to 2007-08, copy of which is

placed on record. In view of the above, the Ld. Representative for the assessee pleaded that the additions on the basis of which the penalty has been levied under section 271(1)(c) do not survive.

5. The Ld. Departmental Representative did not oppose the factual matrix brought out by the learned representative for the assessee.

6. We have heard the rival submissions. Pertinently, for all the captioned years, the penalty u/s.271(1)(c) of the Act has been levied on account of denial of deduction claimed by the assessee u/s 80 IB(10) of the Act. So far as the denial of deduction for assessment years 2002-03,2003-04 and 2004-05 are concerned, it has been done in the respective assessments finalized by invoking section 147/148 of the Act, and for assessment year 2007-08, the denial of deduction is in an assessment finalized u/s.143(3) of the Act. In the quantum proceedings the Tribunal vide its order dated 11/08/2017(supra) has set-aside the invoking of section 147/148 of the Act as well as allowed the claim of the assessee on merits too for assessment years 2002-03, 2003-04 and 2004-05; and, for assessment year 2007-08, the Tribunal allowed assessee's claim for deduction u/s. 80 IB(10) of the Act in its order dated 11/08/2017(supra). Thus, in nut-shell, the proceedings on the basis of which the impugned penalty proceedings have been initiated do not survive as the same have been set-aside by the Tribunal vide its order in ITA Nos. 5527/Mum/2010 to 5531/Mum/2010 dated 11/08/2017 for assessment years 2002-03 to 2004-05 and 2007-08. In view of the above, the penalty levied under section 271(1)(c) of the Act in the impugned proceedings do not survive

and, therefore, we set-aside the order of the CIT(A), and direct the Assessing Officer to delete the penalty.

7. It was a common point between the parties that the facts and circumstances in other appeals are *pari-materia* to those considered by us in ITA No. 6194/Mum/2013 for assessment year 2002-03, in the earlier paragraphs; thus, our decision therein shall apply *mutatis mutandis* in ITA No.6195/Mum/2013,(A.Y. 2003-04), ITA No.6196/Mum/2013 (A.Y.2007-08) and ITA No.6201/Mum/2013 (A.Y.2004-05) also.

8 In the result, all the appeals of the assessee are allowed, as above.

Order pronounced in the open court on 31/07/2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 31/07/2018

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai