

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI G. S. PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1151/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2005-06)

B. Alim Builders 501, Tulsiani Chamber, Free Press Journal Marg, Nariman Point, Mumbai-400021.	बनाम/ Vs.	ITO-12(3)(4) Now Assessed with ITO- 17(1)(5) Aayakar Bhavan, MK Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFB4534H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri D.G. Pansari (Sr.AR)	
Assessee by:	Shri Prakash K. Jotwani	

सुनवाई की तारीख / Date of Hearing: 21.08.2018
घोषणा की तारीख /Date of Pronouncement: 29.08.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 09.11.2016 passed by the Commissioner of Income Tax (Appeals)-28 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the AY. 2005-06 in which the penalty levied by the AO has been ordered to be confirmed.

2. The assessee has raised the following grounds: -

- “1. The Ld. CIT(A) erred on the facts and in law in accepting penalty levied by Ld. AO u/s 271(1)(c) for furnishing inaccurate particulars of income overlooking the facts that quantum is pending at tribunal and overlooking to case law. Commissioner of Income Tax V Dynamic Enterprises

(2013) 40 taxmann.com 318 (Kar) (FB) and Electroplast Engineers V ACIT 24(3) (ITA. No. 5363/M/2014) which are in favour of appellant on same facts..”

3. The brief facts of the case are that the assessee filed its return of income on 12.10.2007 declaring the total income to the tune of Rs.Nil. The return was filed beyond the time limit for filing of return and accordingly was ab-initio void. During the course of assessment proceedings in the case of A.Y. 2006-07, it was seen that the firm was totally different from the earlier firm & the partners were entirely different and there was revaluation of property held by the assessee which was taken over by Shri K.K. Motwani & Shri D.K. Motwani who obtained the property by taking over the firm and continuing with the same name i.e. B. Alim Builders. The said transfer had taken place during F.Y. 2004-05 relevant to A.Y. 2005-06. Thereafter, the assessment proceeding u/s 147/148 was initiated and statutory notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee was a builder. There was no activity except for transfer of the revalued asset and other assets and liabilities to another concern by the same name constituted in June, 2004. The long term capital gain on the transfer assets was assessed to the tune of Rs.3,25,12,443/- and accordingly, the penalty was initiated. The assessee also received the advances in lieu of sale of the property to the tune of Rs.22,40,000/-. However, after the non-utilization of the fund, the same was returned but an amount of Rs.3,00,000/- was found in the account of the assessee and the penalty was also initiated u/s 271(1)(c) of the Act. After the issuance of the penalty notice, the penalty to the tune of Rs.67,98,350/- was imposed on the basis of assessed long term capital gain to the tune of Rs.3,25,12,443/-.

Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order, therefore, the assessee has filed the present appeal before us.

4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that the quantum assessment has been ordered to be set aside by Hon'ble ITAT in ITA. No.8624/M/2010 decided on 31.07.2017, therefore, in the said circumstances, the penalty has no leg to stand therefore the same is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. The copy of the order dated 31.07.2017 for the A.Y. 2005-06 in ITA. No.8624/M/2010 is on the file in which we noticed that the addition on account of LTCCG to the tune of Rs. 3,25,12,443/- has been ordered to be set aside. Since the demand against the assessee in connection with the LTCCG is not in existence, therefore, in the said circumstances, the penalty has no leg to stand. Accordingly, we delete the penalty and allowed the appeal of the assessee.

5. In the result, the appeal filed by the **assessee is hereby ordered to be allowed.**

Order pronounced in the open court on 29.08.2018.

Sd/-

(G. S. PANNU)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29.08.2018.

Vijay

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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