

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA No. 1698/Chd/2017
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Trivikram Real Estate Developer & Consultants Pvt. Ltd. Plot No. 619, IA, Phase IX, Mohali	बनाम	The ITO Ward 6(1), Mohali
स्थायी लेखा सं./PAN NO: AADCT1179M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Jaspal Sharma
राजस्व की ओर से/ Revenue by : Smt. Chandrakanta
सुनवाई की तारीख/Date of Hearing : 03/10/2018
उदघोषणा की तारीख/Date of Pronouncement : 28/11/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A)-2, Gurgaon dt. 04/08/2017.

2. In the present appeal Assessee has raised following grounds:

1. The impugned order is erroneous in law and void abinitio as the Ld.CIT(Appeals) has erred in having confirmed the order of the AO which is illegal and bad in the eyes of law in the absence of satisfaction by the AO specifying the charge for initiation of penalty u/s 271(l)(c).
2. On the facts and circumstances of the case the Ld.CIT(Appeals) has erred in having upheld the penalty of Rs.8,29,950/- imposed by the Ld.AO u/s 271(l)(c) of the Income Tax Act.
3. On the facts and circumstances of the case the Ld.CIT(Appeals) has erred in having confirmed the penalty for the reason that the assessee has not filed appeal against addition made u/s 143(3) nor has made any fresh submissions or clarifications during the appellate proceedings.
4. On the facts and circumstances of the case the Ld.CIT(Appeals) has erred in having confirmed the penalty imposed by the AO holding that the assessee has concealed his income by wrongful interpretation and calculation of the sale proceeds from flats.

3. Brief facts taken from the submissions of the assessee and the records available are that the assessee company was engaged in the business of real estate development. For the asstt.year 2012-13, the assessee filed return showing

NIL income. The assessment was completed at an income of Rs.26,85,915/- making the addition on the ground that the assessee failed to account for the sale consideration of flats sold by assessee during the year under consideration. It was submitted that the assessee follows completed construction method. The assessee constructed four floors each on plot no.44, Sh Shreshta Vihar, New Delhi and Plot no.113, Sarita Vihar, New Delhi. During the year the assessee sold three floors built on plot no.44 and also sold two floors on plot no.113. Sale proceeds of these floors sold, had been treated as advances from customers in the books for the year under consideration and all the direct as well as indirect expenses were added to the cost of work in progress at the end of the year. This was done on the ground that the assessee follows the completed construction method as sale of all the floors/flats built on single plot, was not made in the year under consideration.

4. The assessee accounts for the sale of all the floors in its books of accounts only when sale of all the floors on a common plot, was completed. It was submitted that this was followed because no separate account for the cost of the construction of each floor built on a single plot, was kept by the assessee and as such unless the sale of all the floors built on a single plot, was completed, it was not possible for the assessee to ascertain the cost of construction of each floor and the income earned thereon. This was the method of accounting which was regularly and consistently followed by the assessee.

5. From the details of floors sold it is evident that second floor built on plot no.44, could not be sold during the year under consideration and it was sold during subsequent year. Similarly the second and third floors on plot no.113, were sold during the subsequent year. The entire sale proceeds from all the floors built on plot no.44 and 113, was accounted for in the subsequent year

when second floor on plot no.44 and second & third floor on plot 113, were sold and the income arising out of sale of all the floors on both the plots, was accounted for in the subsequent year i.e. AY.2013-14.

6. During the course of assessment proceedings, the AO directed the assessee to prepare a Profit & Loss account by taking sale consideration at Rs. 1,87,00,000/- of the floors sold by the assessee during the year under consideration and as such the assessee submitted the Profit & loss account declaring net profit at Rs.26,85,915/- on sale consideration at Rs.1,87,00,000/- as desired by the AO which has been accepted by the Revenue.

7. As the assessee already submitted its return on 22.09.2013 for the subsequent year i.e. AY 2013-14 declaring total income at Rs.97,91,276/- on total sale consideration of all the floors/flats on both the above said plots at Rs.7,13,00,000/- , the assessee revised its return on 25.03.2015 for the Asstt. year 2013-14 declaring net profit at Rs. 71,36,150/- On total turnover at Rs.6,51,00,000/- excluding turnover declared for the AY2012-13. The assessment for the AY 2013-14 has been completed on 30.03.2016 accepting turnover and net profit declared as per revised return.

8. The Assessing Officer levied penalty under section 271(1) (c) on the income declared by the Assessee of Rs. 26,85,910/-(Rounded Up) for the current year. The penalty was confirmed by the Ld. CIT(A) holding as under:

I have given careful consideration to the facts of the case, arguments put by the assessee and the reasons for levy of penalty as given by the Assessing Officer in the penalty order. I agree with the arguments brought out by the Assessing Officer, that the appellant has concealed his income by wrongful interpretation and calculation of the sale receipts from flats. It is seen that the assessee has not filed appeal against the addition made under section 143(3) nor has made any fresh submissions or clarifications during the appeal proceedings controverting the arguments made by the Assessing Officer, in the penalty order. I therefore, see no merit in interfering with the penalty levied by Assessing Officer under section 271(1)(c).

9. Before us, the Ld. AR argued that the assessee recognized total sale consideration of all the floors built on plot no.44 and 113 during the subsequent year i.e. AY 2013-14 as per method of accounting regularly followed by the assessee. The Balance sheet and Profit & loss account, for the subsequent year, was completed on 01.09.2013 and original return declaring profit on sale consideration of all the floors, was submitted on 22.09.2013 even before selection of case under CASS for the AY 2012-13(year under consideration) vide notice u/s 143(2) issued on 24.09.2013. Therefore there is no concealment of particulars of income on the part of assessee as all the particulars were before the Ld.AO. No penalty can be levied in view of Reliance Petro 322 ITR 158(SC). He further argued that the Project Completion method is recognized method and there is no loss of revenue as tax rates are same in both the years in the case of company. (299 ITR 1(SC), 311 ITR 289(P&H). He relied on the proposition that the addition is made merely by non acceptance of method of accounting followed by the assessee. No penalty can be levied. (247 ITR 696) (P&H) and also on the proposition that the penalty cannot be imposed merely because assessee accepted the asstt.order. (359 ITR 565(Kar), 152 ITD 871 (ITAT Agra).

10. Ld. DR on the other hand argued that the assessee has offer income for the current year for taxation only after finding the facts by the Assessing Officer and hence penalty has been directly levied.

11. We have heard the arguments of both the parties and perused the material on record. In the instant case the assessee has originally declared the entire transactions after completion of the project before the Revenue Authorities. The Assessing Officer has merely shifted the profits from one year to the other year without any change in the total taxable income over the period of two years. The method of accounting was regularly followed by the assessee

and continuously and we find there was no change in the method of accounting which is disadvantageous to the Revenue. The jurisdictional High Court in the case of CIT Vs. National Mining Company (311 ITR 289) held that in the event of change of accounting method the offer made by the assessee was genuine and bonafide and no penalty can be leviable which is squarely applicable to the facts of the instant case. Similarly in the case of CIT Vs. Bhoj Raj & Co. (247 ITR 693) the Hon'ble Court held that no penalty is leviable in the case where the Assessing Officer has rejected the method of accounting being followed by the assessee and brought certain amount to taxation. In the case of CIT Vs. JH Parabia (Transport) Pvt. Ltd. the Hon'ble High Court of Gujarat (284 ITR 361) held that on the bonafides of the assessee could not be doubted the assessee cannot be visited with penalty of concealment under section 271(1)(c). Since in the instant case also the assessee has declared the income in the subsequent year after complete sale of all the floors and emanating from the facts of the records that no case of concealment of income or furnishing of inaccurate particulars of income could be said to have been established. Hence, we hereby delete the penalty levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act,1961.

12. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court.

Sd/-

संजय गर्ग
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

AG

Date: 28/11/2018

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

Sd/-

डा. बी.आर.आर, कुमार,
(DR. B.R.R. KUMAR, AM)

लेखा सदस्य/ Accountant Member

1. The Appellant, 2.The Respondent, 3. The CIT, 4. The CIT(A), 5. DR, ITAT, CHANDIGARH, 6. Guard File