

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6148/Del/2018
Assessment Year: 2012-13

M/S GREEN VALLEY INFRACITY PVT. LTD., C/O NITESH SINGH, C-190, SECTOR-49, NOIDA-201301 (UP) (PAN: AAFCP8389P) (APPELLANT)	Vs.	ITO, Ward-1(4), Noida (RESPONDENT)
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Assessee by : Sh. Ram Naresh Bhardwaj, CA

Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the impugned Order dated 31.03.2017 of the Ld. CIT(A)-I, Noida pertaining to assessment year 2012-13 on the following grounds:-

1. That on the facts and in the circumstances of the case and in law, the impugned penalty order passed by the Ld. CIT(A) u/s 271(1)(c) is unlawful and untenable because the quantum order passed by the Id. CIT-A making enhancement to the total income, stood set aside by the Hon'ble ITAT and thereby the very subject matter in respect of which this impugned penalty was levied stood quashed

and ceased to survive and therefore the impugned penalty of Rs. 10,78,49,780/- too is liable to be quashed/deleted.

2. That on the facts and in the circumstances of the case and in law. The impugned penalty order passed by the Id. CIT-A is null and void ab-initio and has no legal force to survive because the same is passed without a specific and definite allegation in notice u/s 274 as to under which limb of section 271(1)(c) the same is warranted viz. for alleged concealment of income or for furnishing inaccurate particulars of income and therefore the impugned order so passed being in gross violation of specific provisions of law is liable to be quashed as per settled law on the issue.

3. That on the facts and in circumstances of the case and in law. the impugned penalty order passed by the Id. CIT(A) u/s 271(1)(c) is unlawful. void ab-initio and untenable: because the same is passed without recording any satisfaction by him while passing the said order, which is in gross violation of specific provisions of section 271(1) as well as against the guidelines issued by the CBDT.

which is binding on the Id. CIT-A and therefore the impugned penalty is liable to be quashed.

4. That on the facts and in circumstances of the case and in law, the impugned penalty order passed by the Id. CIT-A u/s 271(1) (c) is unlawful, unjustified and untenable in law as the same is passed without giving any effective opportunity of being heard to the assessee and same is against the specific provisions of law as well as gross violation of principle of natural justice and the same therefore is liable to be quashed /'deleted

5. That the impugned penalty is unjustified, unwarranted, unlawful and untenable because the assessee has neither concealed any income nor had furnished any inaccurate particulars of income and appellant hereby categorically denies all allegations in this regard and has not committed any default nor caused any lapses so as to warrant the impugned penaltc and the same therefore is liable to be quashed.

6. That the above grounds of appeal are independent and without prejudice to one another

7. The Appellant reserves its right to add, amend, modify, supplement, delete, alter, not to

press or withdraw any ground of appeal at any time during the course of appellate proceedings.

2. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. Ld. counsel for the assessee has stated that in the quantum appeal i.e. in ITA no. 6272/Del/2016 (AY 2012-13), the Tribunal vide its order dated 31.5.2018 has set aside the issues in dispute to the file of the Ld. CIT(A) for deciding the same afresh. Hence, he requested that the issues in dispute in the present penalty appeal may also be sent back to the file of the Ld. CIT(A) for passing a fresh order, in accordance with Rules, after passing the order on the Quantum Appeal.

4. Ld. DR relied upon the order of the authorities below, but did not controvert the contention of the Ld. Counsel for the assessee.

5. I have heard both the parties and perused the records especially the impugned order. I find that ITAT, 'SMC' Bench, New Delhi vide its order dated 31.5.2018 in ITA No. 6272/Del/2018 (AY 2012-13) in quantum appeal, in assessee own case has partly allowed for statistical purposes the Appeal by sending back the issues in dispute to the file of the Ld. CIT(A) for deciding the same afresh. For the sake of convenience, the relevant paras of the Tribunal's decision are reproduced hereunder:-

“6. I have heard both the parties and perused records, especially the impugned order. I find considerable cogency in the contention raised by the Ld. Counsel of the assessee that Ld. First Appellate Authority has passed the exparte order without properly considered the submissions of the assessee. I further note that assessee has filed all the necessary documentary evidences for substantiating its claim in dispute before the lower authorities, but the Ld. CIT(A) has not considered the same. Before me, the Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 518 in which he has attached the copy of income tax return and computation; balance sheet and profit and loss account; letter dated 23.1.2015 filed before AO giving details of WIP and submission of evidences for unsecured loan of Rs. 12.75 crores alongwith confirmation and bank statement Greenfield Estate; letter dated 13.2.2015 filed before AO giving break up of WIP and title deed of land of the project under work in progress; letter dated 20.2.2015 filed before AO submitted all the ledgers and vouchers pertaining to work in progress; letter dated 26.2.2015 filed

before AO submitted location map, broucher and approved map of the project; letter dated 20.3.2015 filed before AO submitted copy of partnership deed of Greenfield estate lender of unsecured loan of Rs. 12.75 crores of loan; letter dated 25.3.2015 filed before AO informing the AO that M/s Greenfield Estate has sent confirmation through speed post after which AO completed the assessment; order sheet of AO evidencing that the AO had raised queries for loan of Rs. 12.75 crores and work in progress and examined and verified the documents submitted; notice of enhancement dated 16.5.2015 issued by CIT(A); reply of the assessee dated 26.5.2016 informing the CIT(A) about intention of the assessee to avail the benefit of Direct Tax Dispute Resolution Scheme 2016; submission of assessee dated 20.6.2016 reiterating intention to avail the benefit of Director Tax Dispute Resolution Scheme 2016; copy of order sheet maintained by the CIT(A) evidencing that before issuing notice of enhancement dated 16.5.2016 assessment records were called for and seen and Direct Tax Dispute Resolution Scheme 2016. I also note that the Ld. Counsel of the

Assessee has also certified that the above evidences/ documents were on record of the Ld. CIT(A) & AO, but the Ld. CIT(A) has not considered the same in a proper manner, which in my considered opinion, are very essential to be considered and needs to be examined by the Ld. CIT(A). Keeping in view of the facts and circumstances of the case and in the interest of justice, the issues in dispute are remitted back to the file of Ld. CIT(A) to decide the issues in dispute afresh, after considering all the evidences as discussed above and give adequate opportunity of being heard to the assessee for substantiating its claim. The Assessee is also directed to submit all the documents / evidences before the Ld. CIT(A) in order to substantiate its claim and did not take any unnecessary adjournment and fully cooperate with the Ld. CIT(A) in the proceedings for the speedy disposal of the matter.

7. In the result, the Assessee's Appeal is allowed for statistical purposes."

6. After going through the aforesaid findings of the Tribunal, I am of the view that in the quantum appeal the issues in dispute have been set aside and sent back to the file of the Ld. CIT(A) for

deciding the same afresh, in the aforesaid manner, therefore, the penalty in question involved in this appeal is also set aside to the file of the Ld. CIT(A) with the liberty to pass a fresh speaking order, if any, as per Rules in the appeal, after giving adequate opportunity of being heard to the assessee.

7. In the result, the appeal of the Assessee stand allowed for statistical purposes.

Order pronounced on 28-03-2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated : 28-03-2019

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.