

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 69/Ahd/2018
(निर्धारण वर्ष / Assessment Year : 2011-12)

Chase Buildcon Projects Private Limited Mehta Lodha & Co. Chartered Accountants, 105, Sakar-1, Near Gandhigram Railway Station, Off. Ashram Road, Ahmedabad - 380009	बनाम/ Vs.	The Income Tax Officer Ward 1(1)(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABC1832B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri P. D. Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. K. Dev, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	29/07/2019
घोषणा की तारीख /Date of Pronouncement	29/07/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short), dated 23.11.2017 arising

in the penalty order dated 29.11.2016 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. As per the grounds of appeal, the assessee has challenged the imposition of penalty of Rs.2,16,300/- under s. 271(1)(c) of the Act.

3. When the matter was called for hearing, the learned AR for the assessee pointed out that the assessee is in the business of development of property and in carrying out the said business, an amount of Rs.7 Lakhs was deposited with Debt Recovery Tribunal (DRT) as margin money in an auction to be conducted by DRT for acquisition of property as co-participant along with one Shri Shailesh Patel. The bid of the assessee was not accepted and consequently, the aforesaid amount was refunded by the DRT. The total amount of Rs.22.50 Lakhs was deposited originally which included deposit of Rs.7 Lakhs made directly by the assessee to the DRT and the remaining amount was deposited by the co-participant Shri Shailesh Patel. However, the total amount of Rs.22.50 Lakhs was refunded to Shri Shailesh Patel on failure of auction bid. The assessee could not recover the aforesaid amount of Rs.7 Lakhs from the co-participant and consequently booked the said amount as loss arising from business owing to failure of such recovery. In the circumstances, the learned AR submitted that the claim of the assessee towards revenue loss, while may be wrong, but however is not actuated by any dishonest conduct and is not malafide. It was thus contended that the case of the assessee is thus governed by the decision of Hon'ble Supreme Court in case of *CIT vs. Reliance Petro Products Pvt. Limited* (322 ITR 158) (sc); *Price Waterhouse Coopers vs. CIT* (348 ITR 306) (SC) & *BTX Chemicals Private Limited* (288 ITR 196) (Guj).

4. The learned DR, on the other hand, submitted that the assessee has claimed loss on forfeiture of Rs.7 Lakhs which is misleading. The learned DR further pointed out that the assessee has not made any attempt to recover the money and the fact of non-recovery from Shri Shailesh Patel or DRT remains unproved. The learned DR further pointed out that the co-ordinate bench of ITAT in quantum proceedings has already observed that the claim of the assessee lacks merit. Consequently, the Revenue was justified in imposing penalty. The learned DR thus relied upon the order of the AO and the CIT(A) for confirming the penalty.

5. We have carefully considered the rival submissions. The imposition of penalty under s. 271(1)(c) of the Act on disallowance of expenditure of Rs.7 Lakhs claimed by the assessee as loss on forfeiture for the year under consideration is subject matter of controversy. It is the case of the assessee that it had given a part of business advance amounting to Rs.7 Lakhs to DRT for acquiring property for development as a joint participant with other participant namely Shri Shailesh Patel. The money was refunded by the DRT to the other co-participant which could not be recovered by the assessee. In the circumstances, where the payment of margin money to DRT is not in dispute, the claim of expenditure for such loss on account of non-recovery, while disallowed in quantum proceedings, is not sufficient *per se* to impose penalty under s. 271(1)(c) of the Act. Needless to say, the imposition of penalty is not automatic consequence. The assessee has offered explanation for claim of expenditure which is plausible when tested for the purposes of liability in the form of penalty. Under the circumstances, merely because the claim of expenditure was found to be wrong and not in accordance with law by itself will not justify penalty in the absence of any falsity in the explanation offered. We thus find merit in the plea

of the assessee for non-levy of penalty in the mitigating circumstances existing in the case. We therefore set aside the order of the CIT(A) and direct the AO to cancel the penalty.

6. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on 29/07/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 29/07/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।