

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. No: 1871 & 1872/AHD/2015
(Assessment Years: 2010-11)**

Devnandan Real Estate Pvt. Ltd. 2/3, Ashirwad Complex, Nr. H.K. Complex, Vasna, Ahmedabad-380007	V/S	I.T.O. Ward-1(4), Ahmedabad
(Appellant)		(Respondent)

PAN: AACCD 8180B

**Appellant by : Shri P.M. Mehta, A.R.
Respondent by : Shri L. P. Jain, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 11-06-2019
Date of Pronouncement : 25 -07-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These two appeals filed by the Assessee are directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 07.04.2015 pertaining to A.Y. 2010-11 and following grounds have been taken:

“1. On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the penalty levied u/s 271(l)(c) r.w.s 274 of the Act, when the Ld. A.O had mechanically issued the notice u/s 274 r.w.s 271(l)(c) of the Act without specifying in the assessment order or in the notice u/s 271(l)(c) or in the penalty order u/s 271(l)(c) of the Act under which limb of section 271(l)(c) of the Act, penalty proceedings had been initiated or levied, and therefore the notice issued itself as well as order passed u/s 271(l)(c) are bad in law and deserved to be quashed.”

2. Facts of the case are The assessee filed the return of income on 14/10/2010 declaring total income of Rs. 5,15,50,060/-. The assessment was completed computing total income of Rs. 11,28,08,840/- vide order u/s. 143(3) dated 22/03/2013 after making addition of Rs.9,03,764/- on account of unexplained expenditure. Accordingly, penalty proceedings were initiated against the assessee and notice u/s. 274 r.w.s, 271(l)(c) of the Act for concealment of income on 22/03/2013. The assessee did not submit any reply. To meet with the end of justice, the assessee was given one more opportunity to furnish explanation if any, vide this office show cause notice dated 11/09/2013 which was duly served upon the assessee. In terms of the said notice the assessee's explanation/reply was to reach to the undersigned on or before 20/09/2013.
3. In response thereto, the assessee vide letter dated 19/09/2013 submitted the reply which is perused and placed on record. Before discussing the assessee's submission, I would like to discuss the facts of the case which lead to addition of Rs. 9,03,764/- being unexplained expenditure. In the group case of the assessee an action u/s. 133 of the Act was carried out 19/03/2010. During the course of survey certain documents were found and seized. Such documents revealed that the assessee has purchased immovable property and also incurred

expenditure in cash which are not recorded in the books of account. As such, the assessee group disclosed an amount of Rs. 25.01 crore, the group has bifurcated the Rs. 25.01 crore as under:

- | | |
|------------------------------------|---------------|
| 1. Devnandan Real Estate Pvt. Ltd. | Rs. 10 crore |
| 2. Devnandan Reality Pvt. Ltd. | Rs. 5 crore |
| 3. Devnandan Builder Pvt. Ltd. | Rs. 10 crore. |

4. During the course of assessment proceedings, the impounded material was verified thoroughly and it was found that the assessee has made investment in immovable property amounting to Rs. 24.17 crore and also incurred expenditure in cash on various items amounting to Rs. 1.10 crore which are not recorded in the books of account. Such unrecorded investment and expenditure works out to Rs. 25.27 crore. As the disclosure of Rs. 25.01 crore made by the assessee group was found to be on a lesser-side, during the course of assessment proceedings, the assessee was required to show cause as to why difference amount of Rs. 26,03,000/- should not be added to the income of the assessee as unexplained investment and/or expenditure. In response thereto, the assessee's AR appeared before the AO stated that if the amount of Rs. 26,03,000/- is to be added than whole amount may be added in the case of Devnandan Builders Pvt. Ltd. as major portion of the business was carried out in that entity. The submission made by the assessee was not accepted and the amount of Rs. 26,03,000/- bifurcated into three entities according to the proportion of their turnover. As such, an amount of Rs. 9,03,764/- was added in the assessee's case.

5. From the above, it is very clear that the group companies of the assessee have made undisclosed investment and also incurred expenditure, the source of which the assessee could have not have any explanation. It is, therefore, very clear that the provisions of Section 271(l)(c) is clearly applicable in the assessee's case to the extent of Rs. 9,03,764/-.

6. Now I would like to discuss the submission made by the assessee. A careful perusal of the assessee's submission it can be seen that the assessee is mainly relying on the disclosure made during the course of survey proceedings which is stated to be full and final. The assessee also stated that the authorized officer was convinced with the disclosure of Rs. 25 crore. The submission made by the assessee devoid of any merit. The assessee has not disputed the fact that it has made unaccounted investment of Rs. 24.17 crore in immovable property and also incurred expenditure in cash on various items amounting to Rs. 1.10 crore which are not recorded in the books of account. The assessee also not disputed the fact that the disclosure made by the assessee group is less than the actual amount of unexplained investment and/or expenditure incurred by the assessee. In view of the above, the assessee's submission in this respect is rejected. As the assessee has incurred unexplained expenditure and also made unexplained investment which is not disputed by the assessee. The addition is made in the assessment order clearly prove that the assessee has not honestly made disclosure. In view of the fact that the assessee has concealed the particulars of its income, penalty is, therefore, is leviable. The decision relied by the assessee in the case of CIT Vs. Vinodkumar reported in 312 ITR 335 is distinguishable from the facts of the assessee's case. In that case the Tribunal had deleted the penalty on the ground that there was no evidence before the AO. In the case of the assessee, the addition was made on the basis of

- impounded material. The assessee was give a show cause notice to explain about the unexplained expenditure7investment made in immovable property. As stated above, the assessee has not disputed the fact that the group has incurred expenditure of Rs. 1.10 crore and also made unexplained investment in property. And thereafter imposed a penalty of Rs. 3,49,821/-.
7. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) who dismissed the appeal of the assessee.
 8. We have gone through the relevant record and impugned order. During the course of assessment proceedings, the impounded material was verified and it was found that assessee has made investment in immovable property amounting to Rs. 24.17 crore and also incurred expenditure in cash on various item amounting to Rs. 1.10 crores which were not recorded in books of accounts. Ld. A.R. appeared before the A.O. stated that if amount of Rs. 2603000/- is to be added then whole amount may be added in the case of Devnandan Builders Pvt. Ltd. as major portion of business was carried out in the entity.
 9. In view of the above said acceptance, an amount of Rs. 2603000/- was bifurcated into three entities according to the proportion of their turnover as such an amount of Rs. 903764/- was added in the assessee's case. As assessee has not disputed the fact that group has incurred expenditure of Rs. 1.10 crore and also made unexplained investment in the property and in its defense could not any plausible explanation.

10. In view of the above, since assessee has accepted the addition of Rs. 903764/- being unexplained expenditure, same does not require any kind of inference at our end. Therefore, we confirm action of the ld. CIT(A) .

11. In the result, appeal filed by the Assessee is dismissed.

12. Now we come to ITA No. 1872/Ahd/2015 wherein following grounds have been taken:

1. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming penalty of Rs.1,71,706 levied by the Assessing Officer u/s.271(l)(c) of the I.T. Act.*
2. *The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*

13. And apart from above said ground, assessee has also taken additional ground:

1. *On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the penalty levied u/s 271(l)(c) r.w.s 274 of the Act, when the Ld. A.O had mechanically issued the notice u/s 274 r.w.s 271(1)(c) of the Act without specifying in the assessment order or in the notice u/s 271(l)(c) or in the penalty order u/s 271(l)(c) of the Act under which limb of section 271(l)(c) of the Act. penalty proceedings had been initiated or levied, and therefore the notice issued itself as well as order passed u/s 271(l)(c) are bad in law and deserved to be quashed.*

14. Since facts and circumstances are the same only amount of penalty is different in connected appeal in ITA No. 1871/Ahd/2015. We have confirmed the action of the ld. CIT(A). Therefore, in parity with the connected appeal, we

dismiss the appeal of the assessee and confirmed the penalty imposed and confirmed by the lower authorities.

15. In the result, both the appeals filed by the Assessee are dismissed.

Order pronounced in Open Court on 25 - 07- 2019

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 25 /07/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad