



ITA No.6104/Mum/2017
Aarti Projects & Constructions
Assessment Year -2013-14

आयकर अपीलीय अधिकरण "ऐ" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.6104/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Aarti Projects & Constructions Plaza Panchseel, "A" Wing 5 th Floor, 501 Hughes Road Behind Dharam Palace, Grant Road(W) Mumbai-400 007.	बनाम/ Vs.	DCIT-Central Circle-5(1) Room No.1928, 19 th Floor Air India Building Nariman Point Mumbai-400 021.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAEFA-5526-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
पीलार्थीकीओरसे/ Appellant by	:	Shri Pavan Ved-Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Satish Chandra Rajore -Ld.DR
सुनवाईकीतारीख/ Date of Hearing	:	29/08/2019
घोषणाकीतारीख / Date of Pronouncement	:	13/11/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-53, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.CIT(A)-*



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53/DCCC-5(1)/IT-302/2016-17 dated 22/08/2017 on following grounds of

appeal: -

1. On the facts and circumstances of the case and in law, the Learned CIT(A)-53 has erred in confirming levy of penalty u/s 271(l)(c) of the Act amounting to Rs.21,47,010/- on the following additions made in assessment proceedings u/s 143(3) of the Act;

S.N	Particulars	Amt(Rs.)
1.	Disallowance of expenses which were incurred in relation to the project for which the firm has claimed deduction u/s 80IB(10) of the Act in earlier A.Y.2012-13	68,47,479/-
2.	Disallowance u/s 43B	800/-
3.	Disallowance u/s 40(a)(ia)	1,00,000/-
	TOTAL	69,48,279/-

2. The order under appeal is not only bad in law and invalid, but also against the natural law of equity and justice.

As evident from Grounds of appeal, the assessee is aggrieved by confirmation of penalty of Rs.21.47 Lacs levied u/s. 271(1)(C).

2.1 Facts leading to imposition of penalty are that the assessee being resident firm stated to be engaged as builder & property developer was assessed u/s. 143(3) on 20/01/2016 wherein returned loss of Rs.70.42 lacs e-filed by the assessee on 31/07/2013 was reduced to Rs.0.94 Lacs in view of following disallowances: -

S.No.	Particulars	Amount (Rs.)
1.	Disallowance of expenses	68,47,479/-
2.	Disallowance u/s 43B	800/-
3.	Disallowance u/s. 40(a)(ia)	1,00,000/-



All the disallowances were admitted allowances. During assessment proceedings, it transpired that the assessee did not earn any income from business but debited expenses of Rs.72.28 Lacs. The assessee submitted that it incurred expenses in relation to project income that was offered to tax in AY 2012-13. However, it was noted that the project was notified project and the income earned therefrom qualified for exemption u/s 80IB (10) in earlier years. The assessee, while admitting the same, contended that it made a genuine mistake in return filed u/s 139. The mistake was bona-fide and due to human error. Consequently, project expenses of Rs.68.47 Lacs claimed by the assessee were admitted and disallowed. The second disallowance of Rs.800/- was u/s 43B on account of professional tax not paid before due date of filing of return of income. Penalty was initiated for furnishing of inaccurate particulars of income, against both these additions. The last disallowance of Rs.1 Lacs was u/s 40(a)(ia) on the ground that TDS was not paid up to the day of filing of return. Penalty was initiated for furnishing of inaccurate particulars and concealment of income.

2.2 Consequently, penalty proceedings were initiated against the assessee. During penalty proceedings, the assessee contended that the claim of expenditure was made under bona-fide mistake which was realized at the time of assessment proceedings. Realizing the said mistake, the assessee revised its return of income for AYs 2014-15 & 2015-16 to withdraw the claim of carry-forward losses by the amount of disallowance even before the completion of assessment proceedings. In the above background, the assessee submitted that there was no concealment of



income or furnishing of inaccurate particulars of income within the meaning of Section 271(1)(c). Reliance was placed, *inter-alia*, on the decision of Hon'ble Supreme Court in **Reliance Petroproducts (P) Ltd. (2010 322 ITR 158)** and **Price Water house Coopers (P) Ltd. V/s CIT (2102 25 Taxmann.com 400)**. However, rejecting the same, Ld. AO levied impugned penalty of Rs.21.47 Lacs for furnishing of inaccurate particulars of income.

2.3 The learned CIT(A) noted that the decision of Tribunal in AY 2012-13 with respect to assessee's claim u/s 80IB (10) would have no relevance and a patently incorrect expenses were claimed. The assessee claimed higher losses and had the case not been selected for scrutiny, the assessee would have enjoyed evasion of tax on income thus suppressed. Finally, the penalty was confirmed by observing as under: -

7. It is noted that there is no relevance of the decision in its own case for AY 2012-13 wherein Hon'ble ITAT allowed its claim u/s. 80IB(10). In the facts before me a patently incorrect expense was claimed. Even if appellant's contention that it followed project completion method of accounting and that expenses are claimed this year but are for earlier years is accepted, there is no denying the fact that by claiming it this year a higher loss is claimed and correspondingly higher carried forward loss is claimed. If the case was not selected under scrutiny and this was not found in assessment proceedings, the appellant would have enjoyed evasion of tax on income thus suppressed. It does not matter that the appellant revised its return for subsequent years after being confronted as this making a virtue out of an erroneous and false claim on being caught. As per Explanation 4 to section 271(i)(c) penalty is imposable even where the return is a loss return. Thus penalty in this regard is upheld.

8. As regards the penalty in respect of disallowance of Rs 800 on account of section 43B and Rs 1,00,000 u/s 40(a)(ia), it is noted that the disallowance is again not disputed. How it was an oversight is not shown. The Assessing Officer has held that such a claim is not bonafide. I find no reason to interfere.

Aggrieved, the assessee is under appeal before us.



3. We have heard the rival submissions, perused relevant material on record including documents placed in the paper-book and deliberated on judicial pronouncements as cited before us.

4. Upon due consideration, we find that the assessee was carrying out certain project in earlier years which was eligible for deduction u/s 80-IB(10). Clearly, only the resultant gains earned from the project, net of expenditure, were eligible for deduction. This deduction was available to the assessee over several years and the assessee was conscious of the fact that its project was eligible for deduction u/s 80-IB(10). The assessee has not earned any business income during the year and did not carry out any other project. The expenditure, which were disallowed, pertained to the eligible project carried out in earlier years and therefore, the expenses were not allowable to the assessee as deduction in the year under consideration. The assessee admitted the said fact during assessment proceedings. The Ld. AR has asserted that none of the expenditure has been found to be non-genuine or inadmissible. However, the said argument is not germane to the issue since the basis of levy of penalty was not the fact that the expenditure was non-genuine / inadmissible but the basis of disallowance was the same was the fact that the expenditure pertained to a project, against which deduction u/s 80IB(10) was claimed by the assessee in earlier years and therefore, the same were not allowable to the assessee separately.

5. The Ld. AR has also asserted that the penalty was bad in law, with which we are not convinced. We find that that disallowances were made as



per assessee's own admission. The penalty was initiated as well as levied for furnishing of inaccurate particulars of income which is evident from quantum assessment order as well as penalty order. Nothing on record suggest any infirmity or violation of principal of natural justice. The assessee was provided with adequate opportunity to defend the levy of penalty. Therefore, we do not find any substance in Ground No.2 and the same stand dismissed.

6. At the same time, the disallowances made u/s 43B & 40(a)(ia) were statutory disallowances, nevertheless, the expenses were not found to be non-genuine or inadmissible. Therefore, the penalty on account of these two disallowances would not be justified. We order so.

7. The Ld. AR has raised a plea of inadvertent error / bona-fide mistake in making expense claim of Rs.68.47 Lacs. Reliance has been placed on binding judicial pronouncements as cited above. After considering the facts & circumstances, the bench formed an opinion that keeping in view the submissions made, it would be in the fitness of things to afford another opportunity to the assessee to establish a case of inadvertent error / bona-fide mistake as asserted by Ld. AR before us. Therefore, the matter of penalty on this issue stand restored back to the file of Ld. AO to reconsider the same afresh with a direction to the assessee to substantiate his stand, in this regard.

8. Resultantly, the appeal stands partly allowed for statistical purposes.



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Order pronounced in the open court on 13th November, 2019.

**Sd/-
(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/11/2019
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित/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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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