

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA Nos.844 & 845/Ind/2018**

**Assessment Years: 2007-08 & 2008-09**

M/s Fortune Associates, 157, Zone-I, M.P. Nagar, Bhopal (Appellant)	<b><u>बनाम/</u></b> Vs.	Income Tax Officer -1(2), Bhopal (Revenue)
PAN: AABFF3398F		
Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, Advs.	
Revenue by	Shri K.G. Goyal, Sr. DR	
<b>Date of Hearing:</b>	<b>26.11.2019</b>	
<b>Date of Pronouncement:</b>	<b>28 .11.2019</b>	

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

These appeals at the instance of Assessee pertaining to A.Ys. 2008-09 & 2009-10 are directed against the order of Commissioner of Income Tax-(Appeals)-1, Bhopal, (in short 'CIT'), dated 14.09.2018 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 05.03.2014 by ITO-1(2), Bhopal.

2. The assessee has raised following grounds of appeal in ITANo.844/Ind/2018

*“On the facts and in the circumstances of the case:-*

- 1. The Ld. CIT(A) was not justified in confirming the order of penalty, which bad in law, is void-ab-initio, barred by limitation illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- 2. The ld. CIT(A) did not provide proper and meaningful opportunity of being heard and therefore the order passed by the Ld. CIT(A) deserves to be set aside.*
- 3. The Ld. CIT(A) erred in confirming the penalty of Rs.10,00,000/- u/s 271(1)(c).*
- 4. That the appellant neither concealed any income nor furnished any inaccurate particulars thereof. Therefore, he could not be liable for penalty. The same may please be cancelled.*

2. The assessee has raised following grounds of appeal in ITANo.845/Ind/2018

*“On the facts and in the circumstances of the case:-*

- 1. The Ld. CIT(A) was not justified in confirming the order of penalty, which bad in law, is void-ab-initio, barred by limitation illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- 2. The ld. CIT(A) did not provide proper and meaningful opportunity of being heard and therefore the order passed by the Ld. CIT(A) deserves to be set aside.*
- 3. The Ld. CIT(A) erred in confirming the penalty of Rs.13,00,000/- u/s 271(1)(c).*
- 4. That the appellant neither concealed any income nor furnished any inaccurate particulars thereof. Therefore, he could not be liable for penalty. The same may please be cancelled.*

3. As the issues raised in both appeals are common, both were heard together and therefore are being disposed off by this common order for sake of convenience and brevity.

4. From perusal of the grounds we find that sole grievance in both these appeals for A.Ys. 2007-08 & 2008-09 is against the levy of penalty u/s 271(1)(c) of the Act at Rs.10,00,000/- & Rs.13,00,000/- . Common facts in both these appeals are that assessee's claim of deduction u/s 80IB(10) was denied and penalty proceedings were initiated and finally levied by the Ld. AO and also confirmed by Ld. CIT(A).

5. Now assessee is in appeal before the Tribunal for both assessment years.

6. At the outset, Ld. counsel for the assessee submitted that the quantum issue for both the assessment years is pending before the Hon'ble Jurisdictional High Court and the issue has been admitted as *substantial question of law*. In the similar set off facts in assessee's own case for A.Y. 2009-10, Hon'ble Tribunal vide its order dated 17.10.2019 in ITANo.715/Ind/2018 deleted the penalty levied u/s 271(1)(c) of the Act relying on various judicial pronouncements.

7. Per Contra Ld. Departmental Representative (DR) supported the orders of both the lower authorities but could not controvert the

fact that the issue stands squarely covered by the decision of the Coordinate Bench in assessee's own case vide ITA No.715/Ind/2018 dated 17.10.2019.

8. We have heard rival contentions and perused the record placed before us and carefully gone through judgment referred and relied by the Ld. counsel for the assessee. The assessee has challenged the levy of penalty u/s 271(1)(c) at Rs.10,00,000/- & Rs.13,00,000/- for A.Ys. 2007-08 & 2008-09.

9. We find that the similar issue came up before us for adjudication in assessee's own case for the A.Y. 2009-10 wherein also the quantum issue on which penalty has been levied is admitted as substantial question of law by Hon'ble jurisdictional High Court and we decided the issue in favour of the assessee for A.Y. 2009-10 and deleted the penalty observing as follows:-

*8. We have heard rival contentions and perused the record placed before us. We observe that in the instant case, the assessee was denied benefit u/s 80IB(10) of the Act. Ld. AO treated the assessee as contractor and not as a builder. In the past also assessee had been denied benefit. Quantum issues are pending before the Hon'ble Jurisdictional High Court.*

*9. It has been consistently held by various Hon'ble courts that if the quantum issue is pending before Hon'ble High Court & Apex Court which shows that there is a substantial question of law and the issue is debatable which may be decided in either way then penalty is not leviable u/s 271(1)(c) of the Act.*

*10. The assessee's case is also similar because it had made a claim believing it to be a correct claim but the revenue authorities denied the claim and this question of law is now pending before Hon'ble Jurisdictional High Court.*

*11. Hon'ble Bombay High Court in the case of Nayan Builders and Developers in ITA No.415 of 2012, dismissed the department's appeal and upheld the Tribunal's order of deleting penalty on the ground that when the High Court admits substantial question of law on an addition, it becomes apparent that the addition is certainly debatable and in such circumstances penalty cannot be levied”.*

*12. Coordinate Bench, Indore in the case of Shri Yugal Kishor Jajoo vs. DCIT (ITANo.271/Ind/2011) has held that, when the Hon'ble High Court has admitted the appeal to decide the substantial question of law, no penalty can be imposed.*

*13. Respectfully following the above judgments and in the given facts and circumstances of the case wherein the penalty has been levied for denial of deduction u/s 80IB(10) of the Act and in the preceding years the assessee has carried the issue before the Hon'ble Jurisdictional High Court wherein the issue has been admitted having substantial question of law, we are of the view that the assessee should not be visited with the penalty u/s 271(1)(c) of the Act which has been levied merely on a technical ground and without finding any mistake in the details filed by the assessee in the return of income. Accordingly penalty of Rs.2,00,000/- levied u/s 271(1)(c) of the Act stands deleted.*

10. We, therefore, in the given facts and circumstances of the case and in view of the fact that the issue raised in instant appeal is squarely covered by our own decision in ITANo.715/Ind/2019 dated 17.10.2019 in assessee's own case for A.Y. 2009-10 are inclined to delete the penalty levied u/s 271(1)(c) of the Act at Rs.10,00,000/-

& Rs.13,00,000/- for A.Ys. 2007-08 & 2008-09. We accordingly set aside the finding of Ld. CIT(A) and allow the grounds of appeal raised by the assessee for A.Ys. 2007-08 & 2008-09.

11. In the result, both the appeals of the assessee are allowed.

*Order was pronounced in the open court on 28.11.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 28/10/2019

*Patel, P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar**