



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA no.6461/Mum./2018
(Assessment Year :2010-11)

Asstt. Commissioner of Income Tax
Circle-13(3)(1), Mumbai

..... Appellant

v/s

Rizvi Estates And Hotels Pvt. Ltd.
First Floor, Rizvi House, Hill Road
Bandra (W), Mumbai 400 050
PAN - AAACR5021K

..... Respondent

Revenue by : Shri Vishwas Mohantale
Assessee by : Shri Kamal Mangal

Date of Hearing - 13.01.2020

Date of Order - 17.01.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the Revenue challenging the order dated 25th July 2018, passed by the learned Commissioner (Appeals)-21, Mumbai, deleting the penalty of ₹ 8,50,000, imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") pertaining to the assessment year 2010-11.

2. Brief facts are, the assessee company is engaged in the business of construction of building. For the assessment year under

consideration, the assessee filed its return of income on 14th October 2010, declaring total income of ₹ 1,13,34,984. The assessment in case of the assessee was originally completed under section 143(3) of the Act vide order dated 17th December 2012, determining the total income of ₹ 1,17,48,350. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, through the office of the DGIT (Inv.), Mumbai, that purchases worth ₹ 27,32,475, claimed to have been made during the year from the four parties are non-genuine, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the purchases. Further, to verify the genuineness of such purchases independently, the Assessing Officer issued notices under section 133(6) of the Act to the concerned parties which, as alleged by the Assessing Officer, returned back un-served. Only in respect of one party, though, the notice was served, however, the concerned party denied of having made any sales to the assessee. Thus, on the basis of such facts and material on record, the Assessing Officer held such purchases to be non-genuine. However, since such purchases were not debited to the Profit & Loss account as expenditure, the Assessing Officer reduced them from work-in-progress (WIP). As it appears, against the assessment order so passed, reducing the non-genuine

purchases from WIP, the assessee did not prefer any appeal. On the basis of such reduction of WIP, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income and ultimately passed order dated 27th March 2017, imposing penalty of ₹ 8,50,000, under section 271(1)(c) of the Act. Against the penalty order so passed, the assessee preferred appeal before the first appellate authority.

3. Upon considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) deleted the penalty imposed under section 271(1)(c) of the Act.

4. We have considered rival submissions and perused material on record. As has been observed by learned Commissioner (Appeals) in the impugned order, the amount of ₹ 27,69,102, has not been claimed as expenditure by debiting it to the Profit & Loss account. Rather, such amount was debited to the work-in-progress account of the new building project for which income was offered on project completion method. Thus, as rightly observed by the learned Commissioner (Appeals), the transfer of the amount of ₹ 27,69,102, to the WIP account has not affected the computation of total income for the impugned assessment year. It is further relevant to observe, learned

Commissioner (Appeals) has also taken note of the fact that the assessee has already reduced the WIP account in the assessment year 2011-12 by the amount of ₹ 27,69,102. From the aforesaid facts, not only the bona fide of the assessee is proved, but it has to be concluded that the assessee has not furnished any inaccurate particulars of income so as to be visited with penalty under section 271(1)(c) of the Act. Therefore, in our view, learned Commissioner (Appeals) was justified in deleting the penalty imposed under section 271(1)(c) of the Act. Even, otherwise also the present appeal of the Revenue would not be maintainable on account of low tax effect as the tax effect on the amount disputed in the present appeal is below the monetary limit of ₹ 20 lakh. For the aforesaid reasons, we do not find merit in the grounds raised.

5. In the result, appeal stands dismissed.

Order pronounced in the open Court on 17.01.2020

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 17.01.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai