

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी"
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2386 /मुं/2019 (नि.व.2013-14)
ITA NO. 2386/MUM/2019 (A.Y.2013-14)

M/s. Rite Developers,
310, Veena Chambers,
Fort, Mumbai 400 023.
PAN:AAJFR3140H

: अपीलार्थी/ Appellant

बनाम/ Vs.

Income Tax Officer – 17(3)(2)
Room No.114, Aaykar Bhavan, M.K.Road,
Mumbai 400 020

: प्रत्यर्थी/ Respondent

Assessee by : Shri Satish Mody
Revenue by : Shri Ajay Pratap Singh
सुनवाई की तारीख/
Date of Hearing : 13/10/2020
घोषणा की तारीख /
Date of Pronouncement : 08/01/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-28, Mumbai (in short 'the CIT(A)') dated 22/03/2019 for the assessment year 2013-14.

2. Shri Satish Mody, appearing on behalf of the assessee submitted that the assessee is a builder and developer. The assessee is following Project Completion Method for recognition of profit. The assessee for the impugned assessment year filed return of income on 30/09/2013 declaring 'Nil' income.

During the period relevant to the assessment year under appeal the assessee had paid regularisation charges amounting to Rs.19,51,365/- to BMC in respect of project under construction at Andheri. The said amount was debited to the P&L Account for the financial year 2012-13. The project in respect of which regularisation charges were paid was completed in the financial year 2016-17. In the year of completion, the assessee suo-motu reduced the amount paid to BMC. Thus, the aforesaid charges paid to BMC were never claimed as expenditure by the assessee. The assessment for assessment year 2013-14 was reopened to disallow the alleged penalty and fine paid to BMC. The assessee explained the entire factual position to the Assessing Officer, however, the Assessing Officer made addition of the aforesaid penalty amount. Aggrieved by the assessment order dated 17/03/2016 passed under section 143(3) r.w.s 147 of the Act, the CIT(A) without appreciating the facts rejected assessee's contention and upheld the assessment order, hence, the present appeal by the assessee.

3. Per contra, Shri Ajay Pratap Singh representing the Department vehemently defended the impugned order. The Id.Departmental Representative submitted that the penalty/fine paid to BMC is not allowable in the scheme of section 37(1) of the Act. The submissions made by the assessee was considered by the lower authorities and were rejected by passing a reasoned order. The assessee has reiterated the same contentions before the Tribunal.

4. Both sides heard, orders of authorities below examined. The solitary issue raised by the assessee in appeal is against disallowance of fine/penalty of Rs.19,51,365/- paid by the assessee to BMC. The contention of the assessee is that the assessee is following Project Completion method. The project in

respect of which penalty was paid to BMC was completed in financial year 2016-17. The assessee while filing return of income for the relevant assessment year i.e. assessment year 2017-18 has reduced the amount of penalty/regulation charges amounting to Rs.19.51 lacs paid to BMC. The fact that the assessee is following Project Completion Method to recognise profits has not been disputed by the Revenue. The only issue is, whether the assessee in return of income for the year in which income from project has been declared has reduced the amount of Rs.19.51 lacs paid as penalty/fine to BMC?. We observe from the impugned order (Para-6) that the CIT(A) had sought remand report from the Assessing Officer on this issue. The Assessing Officer in his remand report has mentioned that the assessee in its revised computation for assessment year 2017-18 has reduced penalty/fine to the tune of Rs.19.51 lacs. The CIT(A) has not granted relief to the assessee merely for the reason that in the Tax Audit Report for assessment year 2017-18, the Auditor has not reported any amount of Rs.19,51,365/- paid by way of penalties/fines. Thus, in view of the admitted fact that the assessee has reduced the amount of penalty/regularisation charges in the computation of income while filing of return of income in the year it has offered the profits from the project, no disallowance in respect of aforesaid penalty/regularisation charges is warranted in the impugned assessment year. I find merit in the contentions raised by the assessee. Accordingly, the appeal of assessee is allowed.

5. In the result, appeal by the assessee is allowed.

Order pronounced in the open Court on Friday, the 8th day of January, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 8/01/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai