

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5372/MUM/2019
Assessment Year: 2012-13**

Deputy Commissioner of
Income Tax-Central Circle-
4(2), Central Range-4, Pr. CIT
(C)-2,
Room No. 1918, 19th floor, Air
India Building, Nariman Point,
Mumbai-400021.

Vs. M/s Shivalik Ventures Private
Limited,
Plot No. 746, Staney Fernandes
Wasi, DS Babrekar Marg, Dadar
(W), Mumbai-400028.

Appellant

**PAN No. AALCS 7683 R
Respondent**

Revenue by : Mr. Deepkant Prasad, DR
Assessee by : Ms. Apeksha Gala, AR

Date of Hearing : 22/02/2021
Date of pronouncement : 02/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-52, Mumbai [in short 'CIT(A)'] and arises out of penalty levied u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal filed by the Revenue reads as under :

“On the facts and circumstances of the case and in law, whether the Ld. CIT(A) is justified in deleting the penalty u/s 271(1)(c) of the IT Act of Rs.5,51,56,500/- which was levied by the AO on basis of disallowance of Rs.15,00,00,000/- made by the AO on account of rejecting the claim of the assessee as loss towards the Powai project which was also later termed as Thane Project.”

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2012-13 on 30.03.2013 declaring Nil income. The assessment was completed u/s 143(3) by the Assessing Officer (AO) *vide* order dated 30.03.2014, after making various additions and disallowances, including disallowance of claim of write off of loss of Rs.19 crores relating to a project situated at Fort and disallowance of claim of write off of loss of Rs.15 crores relating to a project situated at Powai. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A), who deleted the disallowance of Rs.19 crores relating to Fort project but sustained the disallowance of write off of Rs.15 crores relating to Powai Project. Aggrieved by the order of the Ld. CIT(A), the assessee filed an appeal before the Tribunal. The AO, in the meanwhile levied a penalty of Rs.5,51,56,500/- *vide* order dated 30.03.2017 treating Rs.15 crores as concealed income.

4. In appeal filed by the assessee against the penalty order, the Ld. CIT(A) allowed it on the ground that the Tribunal *vide* order dated 19.09.2019 has deleted the said quantum addition of Rs.15 crore related to Powai project.

5. Before us, the Ld. Departmental Representative relies on the order of the AO. On the other hand, the Ld. counsel for the assessee supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The only issue in this appeal is the levy of penalty of Rs.5,51,56,500/- u/s 271(1)(c) by the AO on the disallowance of loss of Rs.15 crores related to Powai project, which was upheld by the Ld. CIT(A). We find that *vide* order dated 19.09.2018, the Tribunal has deleted the above quantum addition of Rs.15 crores related to Powai project and decided the appeal in favour of the assessee. The relevant portion of the order of the Tribunal is reproduced hereunder:

“17. Under the set of facts, we notice that the Board of directors have decided to write off the advance of Rs. 15 Crs. given to M/s. Sai Lee group. As noticed earlier, the assessee has taken this decision as a prudent businessman in the facts and circumstances surrounding the case and we are of the view that the tax authorities are not entitled to question the wisdom of the assessee in this regard. Accordingly, in our view, the claim of the assessee company in writing off Rs. 15 crs. cannot be considered to be premature one and accordingly, we are of the view that the Ld. CIT(A) was not justified in rejecting the claim of business loss.

18. In our view, the ratio of various decision relied by Ld. DR are not applicable on the facts of the present case.

19. In view of the foregoing discussions, we are of the opinion that the view taken by the tax authorities is not justified. Accordingly, we set aside the order passed by Ld.

CIT(A) on this issue and direct the AO to allow the claim of Rs. 15.00 crs. claimed by the assessee as business loss. In the result, appeal filed by assessee is allowed.”

6.1 Since the quantum addition has been deleted by the Tribunal, the consequent penalty levied by the AO u/s 271(1)(c) does not survive. Accordingly, we uphold the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 02/03/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 02/03/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai