

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'G': NEW DELHI**

(Through Video Conferencing)

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.5175 /DEL/2018
[Assessment Year: 2012-13]**

Addl. CIT, Special Range, Ghaziabad, CGO-II, Kamla Nehru Nagar, Ghaziabad.	M/s Shipra Estate ltd. Plot No.9, Corporate Office, Shipra Mall, Indirapuram, Ghaziabad
	PAN-AACCS6116J
Revenue	Assessee

Revenue by	Sh. H. K. Choudhary, CIT-DR
Assessee by	Sh. Prateek K. Gupta CA

Date of Hearing	07.09.2021
Date of Pronouncement	07.09.2021

ORDER

PER R.K. PANDA, AM,

This appeal filed by the Revenue is directed against the order dated 10.05.2018 of the learned CIT(A)-III, Kanpur, relating to AY 2012-13.

2. The only effective ground raised by the Revenue reads as under:-

“The Ld. CIT(A) has erred in law in deleting the penalty u/s 271(1)(c) only on the basis of intention of the assessee and by ignoring the fact that it was the AO who brought out the fact that the assessee has not fulfilled the conditions mandatory to claim deduction u/s 80IB of the Income Tax Act. Reliance is placed on Judgment of Hon’ble Bombay High Court in the case of Shanti Ramanand Sagar vs CIT (2018) 402 ITR 245.”

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of construction and sale of flats at different places in Ghaziabad. It also purchases land for carrying out the said activities at other places. It filed its return of income declaring total income of Rs.199,98,55,110/-. During the course of assessment proceedings, the AO noted that the assessee has claimed deduction u/s 80IB(10) of Rs.28,84,19,207/- but restricted it to Rs.13,00,15,605/- for Neo project Sun City Phase-I, Indrapuram, Ghaziabad. After considering various arguments advanced by the assessee, the AO rejected the claim of deduction made by the assessee u/s 80IB(10) of the Act and made addition of the same to the total income of the assessee. Subsequently, the AO initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanation given by the assessee, the AO levied penalty of Rs.4,21,83,563/- u/s 271(1)(c) of the Act.

4. In appeal, the learned CIT(A), deleted the penalty levied by the AO.

5. Aggrieved with such order of the learned CIT(A), the Revenue is in appeal before the Tribunal.

6. The learned counsel for the assessee, at the outset, drew the attention of the Bench to the order of the Tribunal in ITA No.740/Del/2016, order dated 22 January, 2021 for AY 2012-13 and submitted that the Tribunal at para 17 of the order has discussed the issue and allowed the claim of deduction u/s 80IB(10) of the Act. Therefore, once the addition made by the AO is deleted, the penalty does not survive and therefore, the ground raised by the Revenue has to be dismissed.

7. The learned DR, on the other hand, fairly conceded that the Tribunal has decided the appeal in favour of the assessee.

8. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We find the AO in the instant case levied penalty of Rs.4,21,83,562/- u/s 271(1)(c) of the Act on the ground that the deduction claimed by the assessee u/s 80IB(10) amounting to Rs.13,00,15,605/- is not in accordance with law. We find the learned CIT(A) deleted the penalty levied by the AO by relying on various decisions. We find the Tribunal in assessee's own case vide ITA No.740/Del/2016, order dated 22.01.2021 for AY 2012-13 in para 17 of the order has decided the issue and allowed the

claim of deduction u/s 80IB(10) of the Act. Since, the quantum addition made by the AO has already been deleted by the Tribunal, therefore, penalty does not survive. We, therefore, hold that no penalty u/s 271(1)(c) of the Act is leviable. Accordingly, the ground raised by the Revenue is dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order was pronounced in the open court at the time of hearing itself i.e. on 07/09/2021.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Delhi; Dated: 07/09/2021.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

**[R.K.PANDA]
ACCOUNTANT MEMBER**

Asst. Registrar,
ITAT, New Delhi