

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A": NEW DELHI]
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 2690/Del/2018
(Assessment Year: 2014-15)

M/s. Adinath Properties Pvt. Ltd, B-1/12, Vasant Vihar, New Delhi – 110 057. PAN: AAGCA2030B	Vs.	DCIT, Circle-1(1), Gurgaon
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Ms. Suman Malik, Sr. D.R.;
Date of Hearing	22/11/2021
Date of pronouncement	22/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon, for assessment year 2014-15 wherein penalty levied by the ld. Dy. CIT, Circle 1(1), Gurgaon, of Rs. 4,86,675/- is confirmed. The assessee has raised only issue in this appeal with respect to the confirmation of the above penalty.
2. The fact shows that assessee is a company who filed its return of income for assessment year 2014-15 on 2.12.2014 declaring an income of Rs. 3,42,74,949/-. The case of the assessee was selected for scrutiny. During the course of assessment proceedings the ld. Assessing Officer noted that assessee has incurred administrative and marketing expenses and maintained day-to-day operational expenses through an agreement paid to another company M/s. Terra Realcon (Pvt.) Ltd. The assessee paid a sum of Rs. 60,00,000/- to this party in the whole year. The ld. Assessing Officer noted that assessee has deducted a sum of Rs. 60,00,000/- as establishment expenses. Assessee did not produce other than the copy of

the agreement and bills to show that services are rendered by the above company to the assessee. Therefore, the Id. Assessing Officer estimated 1/4th of such expenditure of Rs. 15,00,000/- and computed total income of Rs. 3,57,74,950/-. Assessment order was passed on 26.12.2016. This was not contested. The Assessing Officer in the assessment order initiated penalty proceedings. However, the nature of offence whether it is concealment of income or furnishing inaccurate particulars of income was not mentioned.

3. The assessee did not dispute the above addition before the higher forum. The show cause notice for penalty was replied to by the assessee on 15.06.2017. The assessee submitted that it has incurred establishment expenses of Rs. 60,00,000/- and the Id. Assessing Officer on mere assumptions disallowed 1/4th of the expenditure. It is neither the concealed income or any inaccurate particulars were furnished. It was stated that the assessee produced the copies of the agreement as well as the copies of the bills. The Id. Assessing Officer rejected the submission of the assessee and held that the assessee has failed to show the requisite details for allowability of the complete expenditure. The disallowance is made only when it was selected for the scrutiny. He, therefore, levied a penalty of Rs.4,86,675/- under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
4. The assessee preferred an appeal before the Id. CIT (Appeals), who dismissed the appeal of the assessee.
5. Despite notice, none appeared on behalf of the assessee. Hence, issue is decided on the merits of the case,
6. The Id. DR reiterated the facts stated by the Id. Assessing Officer and the Id. CIT (Appeals). Thus, according to her there is no infirmity in the orders of the lower authorities.
7. We have carefully considered the contentions and perused the orders of the lower authorities. In the present case, the fact shows that assessee has incurred an expenditure of Rs. 60,00,000/- which is paid to M/s. Terra Realcon Pvt. Ltd. for establishment expenses. When questioned, the assessee produced the copy of the agreement as well as copies of the invoices. The Id. Assessing Officer disallowed only 1/4th of the expenditure

and allowed 3/4th of such expenditure. The reason for disallowance was proportionate that assessee could not show that services were rendered. In fact the assessee has shown the agreements as well as the invoices. If the services were found not to have been rendered, the Assessing Officer should have disallowed the complete expenditure. That is not the case. It is not the case of the Assessing Officer that assessee has not produced any details or the details furnished by the assessee are incorrect. The assessee has submitted the agreement and the invoices. This was the only details available with the assessee. The Id. Assessing Officer himself allowed 3/4th of the expenditure. Therefore, it is mere partial disallowance of the expenditure. The information furnished by the assessee also could not be said that they are inaccurate. The mere non-filing of the details or mere non-sustainability of deduction itself does not amount to furnishing of inaccurate particulars. Such is the mandate of the Hon'ble Supreme Court in CIT Vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC). In view of this, we do not find any merit for the levy of penalty under Section 271(1)(c) of the Act when 3/4th of the expenditure is allowed based on agreements and invoices and only 1/4th of the expenditure is disallowed.

8. Accordingly, we reverse the orders of the lower authorities and direct the Assessing Officer to delete the penalty under Section 271(1)(c) of the Act of Rs.4,86,675/-.
9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on : 22/11/2021.

Sd/- (KULDIP SINGH)
JUDICIAL MEMBER

Sd/- (PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 22/11/2021

MEHTA

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1. Appellant;
2. Respondent

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	22.11.2021
Date on which the typed draft is placed before the dictating member	22.11.2021
Date on which the typed draft is placed before the other member	22.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	22.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	22.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	22.11.2021
Date on which the final order is uploaded on the website of ITAT	22.11.2021
date on which the file goes to the Bench Clerk	22.11.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	

