

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "H" : DELHI]

BEFORE SHRI SHAMIM YAYHA, ACCOUNTANT MEMBER
A N D
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.2782/Del/2019

निर्धारण वर्ष /Assessment Year: 2010-11

M/s. Great Value Infra Promoters Pvt. Ltd., C/o. Ravindra Agarwal & Co., CAs. 53 - Naval Vihar, Baghpat Road, Meerut - 250 002 [U.P.]	<u>बनाम</u> Vs.	DCIT, Central Circle, Meerut.
PAN No. AADCG4364R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे / Assessee by :	N o n e ;
राजस्वकीओरसे / Department by :	Shri Tufail Tahir, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	01/06/2022
उद्घोषणाकीतारीख/Pronouncement on :	08/06/2022

आदेश / O R D E R

PER SHAMIM YAYHA, A. M. :

1. This appeal by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals)-IV, Kanpur [hereinafter referred to CIT (Appeals)] dated 28.01.2019 and pertains to assessment year 2010-11.

2. The grounds of appeal raised by the assessee are as under:-

“1. That the penalty under appeal is illegal, having been initiated without specifying the specific limb of section 271(1)(c) of the Income Tax Act, 1961 as to for which act the same was being initiated, as the Id. A.O. had initiated penalty by stating that “Penalty proceedings u/s 271AAA and 271(1)(c) of the I.T. Act, 1961 are also being initiated separately on this issue being undisclosed income, for concealment / furnishing 11 inaccurate particulars of income” and the show cause notice issued along with the " assessment order also did not specify the default of the appellant as to the effect of the concealment of income or furnishing of inaccurate particulars therein.

2. That the order under appeal is illegal and unlawful and the impugned penalty confirmed vide order under appeal is unjust and unwarranted as the appellant has not concealed the particulars of its income.

3. That without prejudice to above, the authorities below have erred on facts by not acceding to the request of the appellant to Keep the penalty proceedings in abeyance till disposal of appellant’s appeal in quantum matter from Hon’ble ITAT, New Delhi and therefore the order under appeal is unjust & unlawful.

4. That without prejudice, the authorities below have erred in law as well as on the facts of the case by imposing & confirming the penalty of Rs.1,65,74,800/- u/s 271 (1)(c) for alleged concealment of particulars of income and the findings and observations made are devoid of any supporting material on record so as to justify addition of undisclosed income in its hands.

5. That without prejudice, the penalty as imposed and confirmed at Rs.1,65,74,800/- is totally unjust & unlawful, as under no circumstances the appellant company, being under construction stage during the year, could be assumed to have earned any income whatsoever from any source, so as to be alleged to have concealed the particulars of its income and the Id. CIT(A) has wrongly ignored the various judicial pronouncements on the issue including that of the Hon’ble jurisdictional High court.

6. That without prejudice to above, the authorities below have wrongly considered the amount of income concealed at Rs.4,87,63,479/- as against the amount of addition confirmed by the Id. CIT(A) at Rs.4,87,50,000/-.

7. The appellant craves leave to add modify or delete any ground of appeal on or before the date of hearing in order to enable your good self to dispose the appeal as per law. “

3.1 In this case an assessment order was passed under Section 143(3) read with Section 153C of the Income Tax Act, 1961 (the Act) dated 28.03.2013. Penalty under Section 271(1)(c) of the Act was also levied amounting to Rs.1,65,74,706/-. Assessee filed appeal before the Id. CIT (Appeals). Grounds raised by the assessee and noted by the Id. CIT (Appeals) read as under:-

“1. That the order under appeal is illegal and unlawful and the impugned penalty imposed vide order under appeal is unjust and unwarranted as the appellant has neither concealed its income nor has furnished inaccurate particulars thereof.

2. That the Id. A.O. has erred in law as well as on the facts of the case by imposing penalty of Rs.1, 65,74,800/- u/s 271(l)(c) for alleged concealment of particulars of income and furnishing of inaccurate particular of income and the findings made by the Ld. Assessing officers are devoid of any supporting material on record and are unlawful and unwarranted.

3. That the penalty as imposed at Rs.1,65,74,800/- vide order under appeal is totally unjust & unlawful, as under no circumstances the appellant company, being under construction stage during the year could be assumed to have earned any income whatsoever from any source so as to be alleged to have concealed its income or furnished inaccurate particulars thereof.

4. That the Id. A. O. has erred on facts by not acceding to the request of the appellant to keep the penalty proceedings in abeyance till disposal of appellants appeal from Hon'ble ITAT, New Delhi, and therefore the order under appeal is unjust & unlawful as the same has been passed without , affording final opportunity of being heard to the appellant to make submissions on merit.

5. That without prejudice to above, the Id. A.O. has wrongly considered the amount of income concealed at Rs.4,87,63,479/- as against the amount of addition confirmed by the Id. CIT(A) at Rs.4,87,50,000/-.

6. The appellant craves leave to add modify or delete any ground of appeal on or before the date of hearing in order to enable your good self to dispose the appeal as per law. “

3.2 The Id. CIT (Appeals) while adjudicating the issue confirmed the penalty. Against this order assessee has filed appeal before the ITAT.

4. We have heard the Id. DR. None appeared on behalf of the assessee despite notice. Upon consideration we note that apart from challenge to the penalty on the addition before us, in ground No. 1 assessee also raised the ground that the penalty notice did not specify the default of the assessee as to the effect of the concealment of income or furnishing of inaccurate particulars therein. The Id. DR in this regard submitted that for deciding this issue necessary records need to be examined in this regard.

5. Upon proper consideration we note that though this issue was never raised before the Id. CIT (Appeals), in our opinion, the jurisdictional issue goes to the root of the matter. Hence in our considered opinion for proper administration of justice, this issue needs to be adjudicated. However, we also note that the Id. CIT (Appeals) never had an opportunity to examine this issue and the Id. CIT - DR is not in a position to assist us with factual relevant details in this regard as to whether the penalty notice specified the default of the assessee or not. Hence, in our considered opinion in the facts and circumstances of the case, it will be appropriate to remit this issue regarding the validity of penalty notice to the file of the Id. CIT (Appeals). The Id. CIT (Appeals) shall examine the same and adjudicate after going through the necessary records in this regard after giving the assessee proper opportunity of being heard.

6. As regards the other aspects of the penalty order challenged before us since we have remitted the jurisdictional aspect to the file of the Id. CIT (Appeals), adjudication by us on the other aspect will only

lead to multiplication of proceedings at this stage. Hence we refrain from making any comment on any other aspect raised by the assessee. After the order of the Id. CIT (Appeals) is complete upon dealing with the issue of jurisdiction, both the parties are free to challenge the order on jurisdiction as well as merits as deemed appropriate.

7. In the result, the appeal of the assessee stands allowed, for statistical purposes.

Order pronounced in the open court on : 08/06/2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAYHA)
ACCOUNTANT MEMBER

Dated : 08/06/2022.

MEHTA

Copy forwarded to :-

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	06.06.2022
Date on which the typed draft is placed before the dictating member	06.06.2022

Date on which the typed draft is placed before the other member	08.06.2022
Date on which the approved draft comes to the Sr. PS/ PS	08.06.2022
Date on which the fair order is placed before the dictating member for pronouncement	08.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	08.06.2022
Date on which the final order is uploaded on the website of ITA	08.06.2022
Date on which the file goes to the Bench Clerk	08.06.2022
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	