

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1590/Ahd/2019
Assessment Year: 2009-10**

Shree Rama Multi-Tech Limited,
603, Shikhar Building,
Near Vadilal House,
Navrangapura,
Ahmedabad – 380 009.
[PAN – AAJCS 1563 N]
(Appellant)

vs. Dy. Commissioner of Income Tax,
Circle – 4(1)(1), Ahmedabad.

(Respondent)

Appellant by : Shri Bandish Soparkar &
Shri Parin Shah, ARs
Respondent by : Shri V.K. Singh, Sr. DR

Date of hearing : 12.07.2022
Date of pronouncement : 05.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by Assessee against the order dated 25.07.2019 passed by the CIT(A)-8, Ahmedabad for the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal :-

- “1. Ld. CIT(A) erred in confirming penalty of Rs.71,27,274/- by invoking provision u/s.271(1)(c) of the Act ignoring submission of the appellant that there is neither concealment of income nor furnishing inaccurate particulars of income which leads to invocation of penalty.
2. Ld. CIT(A) failed to appreciate that ld. AO failed to record proper satisfaction as to penalty for concealment of income or furnishing inaccurate particulars of income and without proper satisfaction penalty order required to be quashed. It be so held now.
3. Ld. CIT(A) erred in confirming penalty ignoring submission of the appellant and also failed to appreciate that there is full disclosure of all

material facts and same also been substantiated by documentary evidences.

4. *Ld. CIT(A) erred in law and on facts in confirming penalty on additions of depreciation of Rs.1,80,63,211/-, prior period expenses of Rs.18,27,854/-, provision for bad and doubtful debts of Rs.15,40,000/- and disallowance of depreciation on closed unit of Rs.86,673/- ignoring fact that different view by appellant and revenue is due to interpretation of various legal provision which does neither leads to concealment of income nor leads to furnishing of inaccurate particulars of income. It be so held now.*

3. The assessee filed return of income on 29.09.2009 declaring therein total income of Rs. Nil after set off of carried forward losses of Rs.51,22,880/-. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 on 17.11.2011 determining total income at Rs. Nil after set off of carried forward loss of Rs.7,03,63,883/- by making the following additions/disallowances :-

1.	Disallowance of depreciation	Rs.1,80,63,211/-
2.	Disallowance of prior period expenses	Rs.12,78,854/-
3.	Disallowance of claim u/s. 24	Rs.21,95,520/-
4.	Disallowance of provision for doubtful debts	Rs.15,40,000/-
5.	Disallowance of depreciation in respect of creditors written off	Rs.11,92,000/-
6.	Disallowance of depreciation on closed unit	Rs.86,673/-

4. Penalty proceedings were initiated by issuing notice under Section 274 read with Section 271(1)(c) of the Act dated 17.11.2011. In the meanwhile, the assessee filed appeal before the CIT(A) and the CIT(A) vide order dated 23.02.2015 confirmed the additions/disallowances related to depreciation on tangible assets, prior period expenses, provisions of doubtful debts & depreciation on closed unit. Though the additions/disallowances were confirmed to the extent of Rs.2,09,68,738/-, the Assessing Officer imposed penalty of Rs.71,27,274/- in respect of additions/disallowances which were confirmed by the CIT(A).

5. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that the quantum appeal in respect of additions/disallowance has been decided by the Tribunal vide order dated 28.01.2022 in ITA No.1345/Ahd/2015 for A.Y. 2009-10. Therefore, the Ld. AR submitted that the penalty itself does not sustain.

7. The Ld. DR relied upon the Assessment Order, Penalty Order and the Order of the CIT(A).

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the very basis on which the penalty has been imposed under Section 271(1)(c) of the Act has been deleted by the Tribunal and thus the penalty does not sustain. Besides this, on merit, the Department could not point out that there is any concealment of income or furnishing of inaccurate particulars of income on the part of the assessee before the Assessing Officer. Hence, the appeal of the assessee is allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 5th day of August, 2022.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 5th day of August, 2022

PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad