

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1682/Del/2021
(निर्धारण वर्ष / Assessment Year : 2016-17)

Jubilant Infrastructure Ltd. Plot No.1A, Sector-16 A, Noida	बनाम/ Vs.	DCIT Circle -1 Noida
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCJ6899C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Ms. Shweta Bansal, CA Sh. Gaurav Jain, Advocate
प्रत्यर्थी की ओर से / Respondent by :	Sh. Anul Jain, CIT DR

सुनवाई की तारीख / Date of Hearing	12.09.2022
घोषणा की तारीख /Date of Pronouncement	12.09.2022

आदेश/ORDER

PER PRADIP KUMAR KEDIA, AM:

The captioned appeal has been filed at the instance of the assessee against the penalty order passed by the Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre, Delhi dated 29.10.2021 concerning AY 2016-17.

2. As per the grounds of appeal, the assessee has challenged imposition of penalty of Rs.9,50,000/- u/s. 271 (1) (c) of the Act with respect to disallowance of depreciation of Rs.28,39,272/- claimed on intangible assets viz water use rights acquired by the assessee.

3. When the matter was called for hearing the Ld. Counsel for the assessee, in defence, broadly submitted that :-

(a) A Onetime payment of Rs.3,58,94,000/- M/s. Gujarat Industries Development Corporation (GIDC) for use of water supply and drainage connection which was capitalized in its fixed assets and the assessee has been claiming depreciation since A.Y.2011-12. No disallowance was carried out in the part.

(b) The disallowance of depreciation in quantum proceedings in A.Y.2016-17 has also resulted in corresponding enhancement of deduction under section 80 IAB by the equal amount. The AO has also allowed the enhanced deduction in the quantum and, therefore, no prejudice was caused to the revenue by such claim. It was thus contended that no malafide can be attributed to the assessee towards such claim and thus no penalty is warranted under normal provisions of Act. It was thereafter pointed out that the adjustment in the 'book profits' towards such disallowance of depreciation does not trigger penalty u/s. 271 (1) (c) in the context of section 115JB of the Act in the light of judgment rendered in the case of CIT Vs. Nalwa Sons Investments Limited (2010) 194 taxmann 387 (Delhi).

4. We find prima facie merit in the plea of the assessee for cancellation of penalty on both counts i.e. under normal provision as well as under MAT provision. In the absence of any malafide as

demonstrated on behalf of the assessee, the penalty u/s. 271 (1) (c) are not attracted under the normal provisions. Not only the allowances for depreciation was accepted in the earlier assessment years such disallowance has not resulted in increase in assessed income due to enhancement of deduction under section 80 IAB. Thus, it is far fetched to impose penalty on such disallowance.

5. Similarly adjustment in the book of profit on account on disallowance of depreciation could not culminate in imposition of penalty under the MAT provisions in view of the judgment of rendered in Nalwa Sons (supra) in which SLP was dismissed by the Honble Supreme Court reported in (2012) 21 taxmann.com 184 (SC).

6. The penalty imposed stands cancelled.

7. In the result, the appeal of the assessee is allowed.

This Order was pronounced in the open court on 12/09/2022

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: /09/2022

Neha, Sr. Private Secretary

Copy forwarded to:

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

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR ITAT
NEW DELHI