

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI VIKASW AWASTHY (JUDICIAL MEMBER)
AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)

ITA 466/Mum/2021
(Assessment year 2015-16)

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| SD SVP Nagar Redevelopment Pvt Ltd 41/44, S.P. Centre, Minoos Desai Marg Colaba, Mumbai-400 005 PAN : AAACW7630B | vs | ACIT-3(3)(1), Mumbai Aayakar Bhavan Maharshi Karve Road Mumbai-400 020 |
| APPELLANT | | RESPONDENT |

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| Assessee represented by | Shri Vijay Mehta |
| Department represented by | Shri J Saravanan, Sr.AR |

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| Date of hearing | 03/11/2022 |
| Date of pronouncement | 16/11/2022 |

ORDER

PER : Shri Amarjit Singh (Accountant Member):

This is an appeal filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)-8, Mumbai (hereinafter Ld.CIT(A)) dated 13/03/2020 against the penalty order passed by the Assessing Officer under section 271(1)(c) of the Income-tax Act, 1961 (in short, 'the Act) levying penalty of Rs.39,70,050/- for the Assessment Year 2015-16. The grounds of appeal raised by the assessee are as under:-

“1. On the facts & circumstances of the case the order passed by Learned Assessing Officer u/s 271(l)(c) of Income Tax Act, 1961 & as affirmed by the Hon'ble CIT(A) is bad in law as the basic conditions for levy of penalty u/s 271(1) (c) are not satisfied. The appellant prays that penalty levied u/s 271(l)(c) may be deleted.

2. On the facts & circumstances of the case the Learned Assessing Officer, while issuing original notice U/s 274 r.w.s. 271(1) (c) dated 22-12-2017 did not frame any specific charge against the appellant as to what is default committed by the appellant in treating revenue expenditure instead of capital expenditure. The Learned CIT(A) has also erred in treating such notice as valid notice. The appellant prays that in the absence of framing specific charge no penalty can be levied u/s. 271(1) (c).

On the facts & circumstances of the case the Learned Assessing Officer and Learned CIT(A) has erred in concluding that the appellant has filed inaccurate particulars of I income by debiting administrative and general expense as business expenditure since! revenue recognition has not yet started. The learned Assessing Officer has considered! this expense as pre-operative in nature and capitalized to work in progress. The/ appellant prays that penalty levied u/s 271(1) (c) by the learned Assessing Officer and! confirmed by the learned CIT(A) may be deleted. I

4. On the facts & circumstances of the case, appellant has disclosed complete details of administrative and general expense in the financial statement and provided party-wise details of each expense before the Learned Assessing Officer. The appellant prays that they have not furnished any inaccurate particulars of income and it was not guilty of any contumacious conduct or any gross or wilful neglect, hence penalty levied u/s 271(1) by the learned Assessing officer and confirmed by the learned CIT(A) (c) may be deleted.

5. The penalty u/s 271(l)(c) is levied only on the ground that the addition was made while passing the assessment order u/s 143(3) of Income Tax Act, 1961. Same was confirmed by the honorable CIT(A).The appellant prays that the merely disallowance of a claim cannot tantamount to filing of inaccurate particulars of income.

6. On the facts & circumstances of the case, the Learned Assessing officer and the Learned CIT(A) failed to acknowledge the fact that amount disallowed in the year current year is otherwise allowable in the subsequent year. The appellant prays that since this expenditure is otherwise allowable under the Act & the appellant's claim is in accordance with the ICAI Guidance note read with relevant account standard rws 145(2) of the Act, the said claim cannot be characterized as "filing of inaccurate particulars & consequently penalty u/s 271(l)(c) of the Act cannot be invoked.

7. On the facts & circumstances, the Learned Assessing officer and the learned CIT(A) has ignored the fact that the issue under consideration has two possible views & where there are more than one view applicable, then penalty u/s 271(1)(c) cannot be invoked.”

2. Facts in brief are that return of income declaring loss at Rs.1,28,48,056/- was filed on 30/09/2015. An assessment under section

143(3) of the Act was completed on 22/12/2017. At the time of assessment, the Assessing Officer noticed that assessee has shown other income to the amount of Rs.15,21,911/- against which assessee had claimed deduction of expenditure of Rs.1,78,87,946/- pertaining to administrative and general expenses. On verification of material obtained during the course of assessment, the Assessing Officer noticed that assessee was engaged in the business of real estate development and it had undertaken a project under MHADA e-development scheme and was developing two societies, viz. Society No.69 during the year under consideration. The Assessing Officer observed that the aforesaid project of developing the society was still under consideration and assessee has not yet started recognizing the cost or revenue in the books of account. However, the assessee had transferred all the expenses to the capital work in progress except aforesaid administrative and general expenses which has been claimed as revenue expenses. On query, the assessee explained that it has followed the guidance note issued by Institute of Chartered Accountants of India (in short, ICAI). However, the Assessing Officer has not agreed with the submissions of the assessee and added the entire administrative and general expenses of Rs.1,78,87,946/- to the capital work in progress and also initiated penalty for furnishing of inaccurate particulars of income. Thereafter, vide penalty order under section 271(1)(c) of the Act dated 28/06/2018, levied penalty of Rs.39,70,050/- for furnishing of inaccurate particulars of income. Aggrieved, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) vide

order dated 13/02/2020 upheld the penalty levied by the Assessing Officer.

3. During the course of appellate proceedings before us, the Ld.counsel for the assessee contested the ground No.3 as the effective ground of appeal and submitted that assessee has disclosed all the particulars of income and debited the impugned administrative and general expenses in accordance with the ICAI guidance note. He also submitted that details of these expenses were also discussed in the financial accounts and statements submitted by the assessee. The Ld.Counsel also submitted that assessee has followed the project / on percentage of completion method for recognizing the revenue every year. The Ld.Counsel further submitted that in the similar manner, the assessee has shown the expenses in the various returns of income filed from A.Ys 2009-10 to 2014-15 which have been accepted by the Assessing Officer under section 143(1) of the Act. After referring to the aforesaid facts and circumstances, the Ld.Counsel contended that assessee has not furnished any inaccurate particulars of income.

4. On the other hand, the Ld.Departmental Representative has supported the order of lower authorities.

5. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer observed that project undertaken by the assessee was still under construction. Therefore, assessee should have also shown the administrative and general expenses as a part of capital work in progress like other expenses. During the course of penalty proceedings, the assessee submitted that it had

accounted the entire expenses as per the specific 'Guidance Note on Accounting for Real Estate Transactions' issued by the ICAI. It was also submitted that assessee had submitted all the relevant details and supporting evidences before the Assessing Officer. During the course of appellate proceedings, the assessee had explained that the accounts of the assessee were duly audited and the audit report was placed as part of record from which it clearly demonstrates that assessee had recognized revenue from project on percentage of completion method following the guidance note issued by ICAI on real estate transactions. It is undisputed fact that genuineness of the expenditure were never doubted and question was only with the allowability of the said expenses. We have perused the copy of guidance note on accounting for real estate transactions dated February, 2022. The relevant paragraphs 2.2 to 2.4 are reproduced below:-

“2.2 Project Costs - Project costs in relation to a project ordinarily comprise:

(a) Cost of land and cost of development rights -All costs related to the acquisition of land, development rights in the land or property including cost of land, cost of development rights, rehabilitation costs, registration charges, stamp duty, brokerage costs and incidental expenses.

(b) Borrowing Costs - In accordance with Accounting Standard (AS) 16, Borrowing Costs which are incurred directly in relation to a project or which are apportioned to a project.

(c) Construction and development costs - These would include costs that relate directly to the specific project and costs that may be attributable to project activity in general and can be allocated to the project.

2.3 Construction costs and development costs that relate directly to a specific project include:

(a) land conversion costs, betterment charges, municipal sanction fee and other charges for obtaining building permissions;

(b) site labour costs, including site supervision;

- (c) costs of materials used in construction or development of property;
- (d) depreciation of plant and equipment used for the project;
- (e) costs of moving plant, equipment and materials to and from the project site;
- (f) costs of hiring plant and equipment;
- (g) costs of design and technical assistance that is directly related to the project;
- (h) estimated costs of rectification and guarantee work, including expected warranty costs; and
- (i) claims from third parties.

2.4 The following costs should not be considered part of construction costs and development costs if they are material:

- (a) General administration costs;
- (b) selling costs;
- (c) research and development costs;
- (d) depreciation of idle plant and equipment;
- (e) cost of unconsumed or uninstalled material delivered at site: and
- (f) payments made to sub-contractors in advance of work performed.”

6. Considering the aforesaid accounting notes, we observe that assessee has substantiated in its explanation that there was bonafide reason to claim the aforesaid expenditure as revenue expenditure. The assessee also explained that similar expenses were also booked for assessment years 2009-10 to 2014-15 which were accepted under section 143(1) of the Act. We have also perused the judicial pronouncement referred by the Ld.Counsel in the case of Granite Gate Properties (P) Ltd vs Principal Commissioner of Income-tax (2019) 102 taxmann.com 236 (Delhi) wherein it is held that –

“Assessee company, engaged in real-estate development, had commenced construction of two housing projects - Assessee incurred indirect project expenses like cost of construction and development and claimed deduction of same - Assessing Officer disallowed expenses claimed by assessee and, further, imposed penalty under section 271(1)(c) upon it - It was noted that expenditures disallowed during relevant assessment years were otherwise eligible and same were allowed in next assessment years - Further, full details with regard to these expenses was disclosed by assessee in return of income and figures given in columns and heads were not disturbed by Assessing Officer and no addition was made by doubting and disturbing figures and amounts mentioned - Whether, on facts, impugned imposition of penalty under section 271(1)(c) was to be set aside - Held, yes”

We have also gone through the decision of ITAT, Mumbai Bench ‘B’ in the case of Macrotech Construction (P) Ltd vs Assistant Commissioner of Income-tax, Circle 6(3), Mumbai reported in (2019) 103 taxmann.com 348 (Mumbai – Trib.) wherein it has been held that –

“IT : Where Assessing Officer disallowed assessee’s claim for deduction of expenditure during year and also imposed penalty under section 271(1)(c) upon it, since expenses as claimed by assessee were otherwise eligible and allowed in next assessment year and all details relating to these expenses were disclosed by assessee, imposition of penalty was to be set aside.”

In view of the aforesaid facts and finding, we consider that the assessee demonstrated that it had acted bonfidelly on the basis of guidance notes of the ICAI and on the basis of accounting of such expenses in the earlier years, etc. Therefore, we find the decision of the Ld.CIT(A) in sustaining the penalty is not justified. Accordingly, we direct the Assessing Officer to delete the penalty levied. The Ld.Counsel has not discussed the other grounds of appeal, therefore same are not required any adjudication. Therefore, the grounds of appeal of the assessee are partly allowed.

7. In the result, appeal filed by the assessee is partly allowed.

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| Sd/- | sd/- |
| (VIKAS AWASTHY) | (AMARJIT SINGH) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Mumbai, Dt : 16 November, 2022

pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR,
ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Dy./Asstt. Registrar) ITAT, Mumbai

