

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'C' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 124/Mum/2023 (A.Y. 2014-15)

Piramal Capital & Housing Finance Limited 4 th Floor, Piramal Tower Ganpatrao Kadam Marg Lower Parel, Mumbai-400 013. PAN : AAACD1977A (Appellant)	Vs.	ACIT, CC-5(4) Room No. 1927 19 th Floor Air India Building Nariman Point Mumbai-400 021. (Respondent)
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Assessee by	Shri Ronak Doshi, CA & Mr. Priyank Gala
Department by	Shri K.C. Selvamani
Date of Hearing	07.02.2023
Date of Pronouncement	16.02.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 23.11.2022 passed by Ld CIT(A)-53, Mumbai and it relates to the assessment year 2014-15. This appeal relates to the penalty levied u/s 271(1)(c) of the Act.

2. At the outset, the Ld A.R submitted that the assessee underwent insolvency resolution process and the National Company Law Tribunal (NCLT) has approved the resolution plan, vide its order dated 07-07-2021, which, inter alia, included demand raised in the present penalty proceedings for AY 2014-15. As per the order of NCLT, all the income tax dues shall stand extinguished. Hence, the demand raised in the impugned penalty order shall stand extinguished. He submitted that the Ld CIT(A), on noticing the order of NCLT, has allowed the appeal of the assessee stating that "the appeal is dismissed, being infructuous". He submitted that the Ld CIT(A)

should have stated that the appeal of the assessee is allowed, in the facts stated above.

3. On merits, the Ld A.R submitted that the penalty has been levied by the AO u/s 271(1)(c) of the Act in respect of amortization of premium payable on Zero Coupon Bonds (ACB). The assessee had initially claimed the deduction of premium payable on ZCB on pro-rata basis spread over the period of bonds. Subsequently, the assessee claimed entire premium amount as deduction during the year under consideration following the ratio of decision rendered by Hon'ble Supreme Court in the case of Taparia Tools Ltd (55 taxmann.com 361)(SC). However the said claim has been disallowed by the AO and the impugned penalty has been levied on the above said disallowance. He submitted that it is not a case of furnishing of inaccurate particulars of income as alleged by the AO. By placing reliance on the decision rendered by Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd (322 ITR 158)(SC), the Ld A.R submitted that the disallowance of claim made in the return of income on legal grounds will not result in furnishing of inaccurate particulars of income. Accordingly, he submitted that the AO was not justified in levying penalty u/s 271(1)(C) of the Act for furnishing inaccurate particulars of income on the disallowance of claim of amortization of premium payable on ZCB. Accordingly, he pleaded that the appeal of the assessee should be allowed.

4. The Ld D.R submitted that the Ld CIT(A) has already allowed the appeal filed by the assessee against the penalty order holding the same as infructuous. The Ld CIT(A) has allowed the appeal by observing that the "appeal of the assessee is dismissed, being infructuous". He submitted that the grievance of the assessee seems to be that the Ld CIT(A) should have mentioned as "appeal is allowed". He submitted that the Ld CIT(A) has given proper reasons in support of his decision and in any case, the demand may

not be enforced in view of the order passed by NCLT. In view of the above facts, the Ld D.R submitted that there is no grievance left for the assessee to file the present appeal before the Tribunal and hence the same is liable to be dismissed.

5. We heard rival contentions and perused the record. We notice that the Ld CIT(A) has taken cognizance of the order passed by NCLT, wherein it has been held that the statutory demands including the present demand of penalty raised for AY 2014-15 shall stand extinguished. Accordingly, the Ld CIT(A) has taken the view that the appellate proceedings before him will not survive and accordingly dismissed the appeal of the assessee, as infructuous. We notice that the Ld CIT(A) has not dealt with the issue on merits.

6. Before us, the Ld A.R argued on merits also. The Ld D.R, on the contrary, submitted that there cannot be any grievance to the assessee as the demand has already been extinguished in the order passed NCLT. We agree with the submissions made by Ld D.R. When the demand raised u/s 271(1)(c) of the Act has already been extinguished by the order passed by NCLT, which has also been followed by Ld CIT(A) in holding that the appeal filed by the assessee before him has become infructuous, there cannot be any grievance to the assessee which would warrant filing of present appeal before the Tribunal.

7. In view of the above discussions, we are of the view that the present appeal of the assessee does not require adjudication at all, as there cannot be any grievance to the assessee as the demand has already been extinguished, which fact has been accepted by the Ld CIT(A). The only apprehension of the assessee perhaps is that the AO may not nullify the demand, since the Ld CIT(A) has observed that he is dismissing the appeal as infructuous. In our view, this apprehension is unfounded, since the AO

should necessarily nullify the demand following the order passed by NCLT and not on the basis of appellate orders passed under the Income tax Act.

8. Accordingly, we hold that there is no necessity to adjudicate any of the grounds urged by the assessee before the Tribunal.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 16.2.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 16/02/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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