

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 289/KOL/2020  
Assessment Year: 2016-2017**

***Eastern Devcon Limited,.....Appellant  
548, S.N. Banerjee Road,  
Mistry Ghat Monirampore,  
Barrackpore, Kolkata-700120  
[PAN: AADCE4093K]***

***-Vs.-***

***Income Tax Officer,.....Respondent  
Ward-11(2), Kolkata  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Raj Kumar Agarwal, C.A., appeared on behalf of the  
assessee*

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the  
Revenue*

**Date of concluding the hearing : March 15, 2023**

**Date of pronouncing the order : March 31, 2023**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals)-4, Kolkata dated 16.12.2019 passed for A.Y. 2016-17.

2. The solitary grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the penalty of Rs.17,40,189/-.

3. Brief facts of the case are that the assessee filed its return of income declaring a loss of Rs.51,87,901/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The ld. Assessing Officer has observed that in A.Y. 2011-12, the assessee-company had taken the opening stock value of the flats ready for sale at Rs.1,07,31,700/-. Thereafter the assessee has accounted various expenditures. The assessee has sold the flats at the value declared in the stock. The ld. Assessing Officer was of the view that the assessee has committed an error in taking the stock value of the flats, because the assessee has sold the flats on the same value as is declared in the stock. He accordingly rejected the book result, estimated the profit, and disallowed the loss claimed by the assessee. He determined the taxable income at Rs.4,43,780/-.

4. Against disallowance of losses and determination of profit on an estimate basis, the assessee went in appeal. The dispute ultimately travelled upto the Tribunal in ITA No. 157/KOL/2022. The Tribunal vide its order dated 28.03.2023 rejected the arguments of the Department and observed that rejection of books of account is incorrect. The Tribunal directed the ld.

Assessing Officer to accept the book result and determine the income. In other words, Tribunal has deleted the estimation of income and directed the ld. Assessing Officer to allow the loss suffered by the assessee.

5. With the assistance of ld. Representative, we have gone through the record carefully. Sub-clause (iii) of section 271(1)(c) provides a method of computation of penalty. According to this sub-clause, a penalty is to be computed either equivalent to the taxes on the additions made to the declared income or three times of taxes on such addition. In the present case, the very addition in the declared income has been deleted by the Tribunal therefore, there is no foundation to compute the penalty upon the assessee. In view of the deletion of the additions in the quantum appeal, no penalty is imposable upon the assessee. Accordingly the present appeal is allowed and the penalty imposed upon the assessee is deleted.

**6. In the appeal, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 31<sup>st</sup> March, 2023.

Sd/-

**(Girish Agrawal)**  
**Accountant Member**

Sd/-

**(Rajpal Yadav)**  
**Vice-President (KZ)**

***Kolkata, the 31<sup>st</sup> day of March, 2023***

*Copies to :* (1) **Eastern Devcon Limited,**  
**548, S.N. Banerjee Road,**  
**Mistry Ghat Monirampore,**  
**Barrackpore, Kolkata-700120**

(2) **Income Tax Officer,**  
**Ward-11(2), Kolkata**  
**Aayakar Bhawan,**  
**P-7, Chowringhee Square,**  
**Kolkata-700069**

(3) *Commissioner of Income Tax (Appeals)-4,*  
*Kolkata;*

(4) *Commissioner of Income Tax- , Kolkata;*

(5) *The Departmental Representative*

(6) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,*  
*Income Tax Appellate Tribunal,*  
*Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**