

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 160/Mum/2023
(A.Y: 2015-16)

Piramal Capital & Housing Finance Ltd (Formerly known as Dewan Housing Finance Corp Ltd) 4 th Floor, Piramal Tower, Ganpatrao Kadam Marg, Delisle Road, SO Mumbai-400013	Vs.	ACIT, CC 5(4) Room No. 1927, 19 th Floor, Air India Bldg, Nariman Point, Mumbai – 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACD1977A		
Appellant	..	Respondent

Appellant by :	Mr.Ronak Doshi,& Mr.Priyank Gala.AR
Respondent by :	Mr. Sunku Srinivasu.DR

Date of Hearing	02.02.2023
Date of Pronouncement	21.02.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 53 passed u/s 250 of the Act challenging the penalty levied U/sec271(1)(c) of the Act.

2. The brief facts of the case are that, the assessee is a public limited company (earlier known as M/s Dewan Housing Finance Corporate Ltd) registered as a housing finance company with National Housing Bank (NHB) and is engaged in the business of providing housing loans to customers for construction or purchase of residential property and loans against property. The assessee has filed the return of income for the 2015-16 on 31.08.2015 disclosing a total loss of Rs.100,70,16,074/-. Further the assessee has filed the revised return of income with a loss of Rs. 101,87,76,664/- and the return of income was processed u/s 143(1) of the Act. Subsequently the assessment was completed u/s 143(3) on 27.12.2017 with the assessed income of Rs.649,85,99,380/-. Against the additions & disallowances, the assessee has filed an appeal before the CIT(A), and the CIT(A) has confirmed the disallowance of premium on Zero Coupon Bond of Rs. 867,54,86,937/- made by the AO. Subsequent to the receipt of the CIT(A) order, the AO has issued show cause notice for levying penalty u/s 271(1)(c) of the Act. In compliance, the assessee has

filed a letter dated 6-1-2021 in the penalty proceedings explaining the nature of claim of deduction in respect of premium on issue of Zero Coupon Bonds (ZCB), facts of the Assessement proceedings and CIT(A) proceedings on the quantum disputed issue and dealt in the penalty order. But the A.O. was not satisfied with the explanations and has levied penalty of Rs294.87 crs and passed the order us 271(1)(c) of the Act dated 22.01.2021.

3. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, findings of the A.O, Submissions and the Honble Tribunal decision on the quantum proceedings including reference to the orders of NCLT & NCALT and has dismissed the appeal as infructuous. Subsequently, the assessee has filed a letter dated 25-11-2022 before the CIT(A). Whereas the CIT(A) has considered the assessee request and observed in the order dated 6-12-2022 as under.

Vide letter dated 25th Nov., 2022, the appellant has requested that the appeal be treated as allowed and not as "dismissed, being infructuous". The appellant has also

cited the Corrigendum dated 22.06.2022 issued by the Hon'ble ITAT, Mumbai.

2. The submission of the appellant has been considered. There is a huge difference between an appeal being treated as allowed and being dismissed as infructuous. If an appeal is allowed, it means that the entire demand gets nullified and the demand is reset to Nil. Whereas, if the appeal is dismissed as infructuous, the AO can pursue recovery of the demand as per the directions of the Hon'ble NCLT, or in accordance with the IBC provisions. Thus, these 2 terms are distinctly different. Hence, this request of the appellant cannot be acceded to. It is also noted that the Corrigendum issued by the Hon'ble ITAT does not show any presence of the Counsel of the respondent.

3. In view of the above, when the appellant has not argued the appeal on merits, the same is rightly being treated as dismissed, being infructuous. The AO is free to pursue his legal remedies before the Hon'ble NCLT or any other judicial forum as appropriate.

Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in dismissing the assessee appeal irrespective of the fact that the Honble Tribunal has granted relief in the quantum appeal considering the proceedings of NCLT & NCALT and the assessee was in insolvency resolution process and the NCLT has

approved the resolution plan on 7-7-2021 and further the demand raised in the present penalty proceedings is included in the approved resolution plan. The Ld.AR emphasized that as per the order of NCLT all the incometax dues shall stand extinguished and the Ld.AR has substantiated the submissions with the judicial decisions and paper book. Per Contra, the Ld. DR relied on the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Whereas on the identical issue in the assessee own case for A.Y.2014-15, the Honble Tribunal in ITA No 124/Mum/2022 vide order dated 16-02-2023 has dealt on the facts, law and details at Para 5 to 9 of the order read as under:

“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. “

6. We find the facts of the present case are identical as discussed in the above decision and we respectfully follow the judicial precedence and with the similar observations hold the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 21.02.2023.

Sd/-

(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 21.02.2023

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//()

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai