

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

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 29/KOL/2022
Assessment Year: 2015-2016**

***Ashiana Landcraft Realty Pvt. Limited,.....Appellant
5F, Everest,
46/C, Chowringhee Road,
Shakespeare Sarani,
Kolkata-700071
[PAN: AADCV9268K]***

-Vs.-

***Principal Commissioner of Income Tax-3,..Respondent
Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Sudip Sen, Staff, appeared on behalf of the
assessee*

*Shri S. Datta, CIT (D.R), appeared on behalf of the
Revenue*

Date of concluding the hearing : August 23, 2023

Date of pronouncing the order : August 24, 2023

ORDER

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

The present appeal is directed at the instance of asseseee against the order of ld. Principal Commissioner of Income Tax-3, Kolkata dated 20th February, 2020

passed under section 263 of the Income Tax Act, 1961 in A.Y. 2015-16.

2. In response to the notice of hearing, Shri Ashish Gupta, ld. C.A. has filed an application for adjournment contending therein that the assessee is under Corporate Insolvency Resolution Process (CIRP) and National Company Law Tribunal (NCLT), Kolkata Bench has approved the Resolution Process vide order dated 11th August, 2023. Apart from the above fact, we find that the impugned order is not sustainable. Therefore, we rejected the prayer for adjournment and heard the case with the assistance of ld. CIT(DR).

3. A perusal of the impugned order would reveal that ld. Pr. Commissioner has treated the assessment order as erroneous and prejudicial to the interest of revenue on the ground that the assessee had entered into an agreement with Director of Town & Country Planning Haryana whereby it was supposed to make the payments of external development charges (EDC). Such charges were not deposited with the Town & Country Planning within the due date stipulated in the agreement but rather payment was delayed. On such delayed payment, an interest of Rs.47,50,000/- has been claimed as expenditure. In the opinion of ld. Pr. CIT, this expenditure ought to have been disallowed to the

assessee by the ld. Assessing Officer on the ground that it is penal in nature.

4. On due consideration of the facts and circumstances, we are of the view that Explanation appended to Section 37 of the Income Tax Act contemplates that if any expenditure is being incurred by an assessee on an item, which is prohibited by law, then, such expenditure will not be allowed as a deduction to the assessee. The payment herein was not for infringement of any law. Thus according to us, it is a compensatory payment, which does not fall in the category of any penalty. The ld. Pr. CIT has misconstrued the nature of this interest payment as a penalty and termed the assessment order as erroneous, which has caused prejudice to the interest of revenue by not charging of tax on this amount. Since we have held that it is not in the nature of penalty, rather a compensatory in nature, therefore, the deduction of this amount deserves to be allowed to the assessee and the ld. Assessing Officer has allowed it. The ld. Assessing Officer has not committed any error and his order cannot be termed as erroneous, which has caused prejudice to the interest of revenue. Thus we allow this appeal of the assessee and quash the 263 order impugned herein.

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

Order pronounced in the open Court on August 24, 2023.

**Sd/-
(Rajesh Kumar)
Accountant Member**

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

Kolkata, the 24th day of August, 2023

*Copies to : (1) Ashiana Landcraft Realty Pvt. Limited,
5F, Everest,
46/C, Chowringhee Road,
Shakespeare Sarani, Kolkata-700071*

*(2) Principal Commissioner of Income Tax-3,
Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax ,
(4) The Departmental Representative
(5) Guard File*

TRUE COPY

By order

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

Laha/Sr. P.S.