

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

ITA NO. 2881/MUM/2023 (A.Y: 2009-10)

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| ITO-24(3)(1) Primal Chamber, Room No. 616 Parel, Lalbaug, Mumbai- 400012 | v. | RONAK MARBLES INDUSTRIES C/14 Dalai Industries Estate Veer Desai Road, Versova Road Mumbai - 400058 PAN: AAAGR2351R |
| (Appellant) | | (Respondent) |

| | | |
|--------------------------------------|---|----------------------------|
| Assessee Represented by | : | Shri M. Subramanian |
| Department Represented by | : | Smt. Mahita Nair |
| | | |
| Date of conclusion of Hearing | : | 15.04.2024 |
| Date of Pronouncement | : | 15.04.2024 |

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal filed by the Revenue is preferred against the order dated 26.06.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y. 2009-10.

2. The sum and substance of the grievance of the revenue is that the Ld. CIT(A) / National Faceless Appeal Centre, Delhi, erred in deleting the penalty levied by the Assessing Officer under section 271(1)(c) of Income-tax Act, 1961 (in short "Act").

3. The roots for the levy of penalty lie in the assessment order dated 21.02.2014 framed under section 143(3) of the Act in which the Assessing Officer made the addition at ₹.5,00,38,800/-. The assessment was challenged before Ld. CIT(A) and the Ld. CIT(A) gave partial relief to the assessee by confirming the addition to the extent of 65%. Both the assessee and the revenue approached this Tribunal and this Tribunal vide order dated 14.03.2017 in ITA No. 3318/M/2015 and ITA No. 3045/MUM/2016 deleted the entire addition, the relevant findings of the Coordinate Bench read as under: -

"After considering the facts of the case in the light of the ratio laid down by the Hon'ble Jurisdictional High Court and others including the decisions of the Coordinate Benches of the Tribunal, we are of the considered view that the order of FAA upholding partly the order of AO levying tax on the LTCG on the basis of development agreement was wrong and cannot be sustained. Accordingly, we set aside the order of the FAA and direct the AO to delete the total addition in the current year. We further hold that the application of provisions of section 50C is also bad in the present scenario as there was no transfer of land or building has taken place. Accordingly, the appeal of the assessee is allowed."

4. Since the additions has been deleted by the Coordinate Bench, the penalty so levied does not have any legs to stand and since the foundation has been removed the superstructure must fall and the Assessing Officer is directed to delete the penalty. In the result, appeal filed by the revenue is dismissed.

5. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 15th April, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai / Dated 15.04.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum