

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4807/M/2023
Assessment Year: 2009-10
&
ITA No.4806/M/2023
Assessment Year: 2010-11**

DCIT, Central Circle-1, Room No.-10, A Wing, 6 th Floor, Ashar I.T. Park, Road No.16-Z, Wagle Industrial Estate, Thane (W)-400604 Maharashtra	Vs.	M/s. Ravi Development, 76 Laxmi Palace, Mathuradas Road, Kandiwali (West), Mumbai Maharashtra – 400 067 PAN: AAAGR2516G
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anand Kanse, A.R.

Revenue by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 03 . 06 . 2024 & 04 . 06 . 2024

Date of Pronouncement : 26 . 06 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Revenue against the order even dated 30.10.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2009-10 & 2010-11.

2. The issues involved in both the appeals are identical and therefore for the sake of brevity the same are being disposed of by this composite order, considering ITA No.4807/M/2023 (AY 2009-10) as a lead case and result of the same shall apply mutatis mutandis to both the appeals under consideration.

3. In the instant case on the basis of search action carried out under section 132 of the Act in the case of assessee on 24.03.2011 & 26.03.2011, the assessment was completed vide order dated 28.03.2013 under section 143(3) read with section 153A of the Act, whereby the income of the assessee was determined at Rs.10,64,96,520/-. Subsequently, the case of the assessee was reopened under section 147 of the Act which resulted into passing the assessment order dated 20.12.2016 under section 147 read with section 143(3) of the Act, whereby the addition of Rs.3,42,31,544/- was made on account of disallowance of provision for cost of construction.

4. The assessee being aggrieved challenged the initiation of proceedings/reopening of the case under section 147 of the Act as well as making the addition by the Assessing Officer (AO) before the Ld. Commissioner, however, could not get succeeded and thereafter penalty order dated 03.09.2021 was passed whereby the penalty to the tune of Rs.1,16,35,301/- @100% of the tax sought to be levied.

5. Thereafter the Hon'ble Tribunal, vide order dated 12.01.2023 in ITA No.937 & 938/M/2022 decided the second appeal filed against the assessment order and **quashed the assessment order itself**

on the basis of reopening of the case under section 147 of the Act.

6. Subsequently the Ld. Commissioner vide order dated 30.10.2023, deleted the penalty, by taking cognizance of the order dated 12.01.2023 passed by the Hon'ble Tribunal in quantum appeal wherein the assessment order itself has been quashed.

7. The Revenue Department being aggrieved with the impugned order deleting the penalty has preferred this appeal and mainly claimed that the Revenue Department has already challenged the order dated 12.01.2023 passed by the Hon'ble Tribunal in quantum appeals No.937 & 938/M/2022 before the Hon'ble High Court and therefore the penalty is liable to be upheld.

8. On the contrary the Ld. A.R. refuted the claim of the Revenue Department.

9. Having heard the parties and perused the material available on record, admittedly the addition on the basis of which the penalty has been levied in fact is not in existence, as the same stands deleted by quashing the assessment order itself by the Hon'ble Tribunal. It is also admitted fact that though the order passed in quantum appeal by the Hon'ble Tribunal has already been challenged by the Revenue Department before the Hon'ble Bombay High Court, however, there is no stay in existence against the order passed in quantum appeal and even otherwise there is no order such as staying/upholding the penalty order/levy of penalty. Hence, considering the peculiar facts and circumstances in totality, we are inclined not to interfere in the impugned order, as the same does not suffer from any perversity, impropriety and/or illegality. **Thus, the instant appeal is liable to be dismissed.**

10. In the result, both the appeals filed by the Revenue Department stand dismissed.

Order pronounced in the open court on 26.06.2024.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.