

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA No. 543/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2012-13)

Asstt. Commissioner of Income Tax Circle 2(1), Kondapur Hyderabad	Vs.	HYMA Developers (P) Ltd (formerly known as DLF Homes Kokapet Pvt Ltd) Kondapur, Hyderabad [PAN : AACCK9921H]
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Advocate A.V. Raghuram
राजस्व द्वारा/Revenue by: Shri CH Rajeswara Reddy, DR

सुनवाई की तारीख/Date of hearing: 03/07/2024
घोषणा की तारीख/Pronouncement on: 19/07/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

2. Aggrieved by the order dated 08/09/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of HYMA Developers (P) Ltd ("the

assessee”) for the assessment year 2012-13, the Revenue preferred this appeal.

3. Assessee is a company. It filed its Return of Income for the AY 2012-13, declaring a loss of Rs. 5,42,39,733/- inclusive of interest claimed as revenue expenditure Rs. 4,63,68,948/-. Assessment u/s 143(3) of the Income Tax Act, 1961 (for short “the Act”) was completed on 25.02.2015 at a loss of Rs.(-) 5,11,506/- as against the returned loss of Rs.(-) 5,42,39,733/- thereby making disallowance on account of interest expenses to the tune of Rs.4,63,35,631/- and commission and brokerage expenses to the tune of Rs.73,59,279/-. Aggrieved by the order of the learned Assessing Officer, the assessee preferred appeal before the learned CIT(A), who by his order in Appeal No. 45/2015-16 dated 03.02.2017, inter alia, sustained said additions which were subjected to initiation of penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income and concealment of income. Learned Assessing Officer, accordingly, levied penalty of Rs.1,50,44,405/- u/s 271(1)(c) of the Act @ 100% of the tax evaded for concealment of its true income and for furnishing inaccurate particulars of income as the assessee failed to substantiate its claim at the time of assessment proceedings as well as at the time of penalty proceedings.

4. Aggrieved, assessee preferred appeal before the learned CIT(A) challenging the levy of penalty stating that all the particulars were furnished before the learned Assessing Officer and it is only on verifying those particulars learned Assessing Officer made certain disallowances and therefore, the case does not fall in the category of either concealment of income or furnishing of inaccurate particulars. Assessee also pleaded that for the assessment year 2011-12 a similar penalty was levied and it was deleted by the learned CIT(A) in appeal holding that the case does not fall in either of the categories.

5. Learned CIT(A), based on the order passed by the Assessing Officer for the assessment year 2011-12 in assessee's own case levying penalty, and held that it is not a fit case for levy of penalty as it could not be said that the assessee had furnished inaccurate particulars of income or had concealed the particulars of income and accordingly, penalty levied by the AO is liable to be deleted.

6. According to the learned DR, making a wrong claim also amounts to furnishing of inaccurate particulars and thereby concealment of income and on that score he justified the orders of the authorities.

7. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that as against the loss of ₹ 5, 42,39,733/-claimed by the assessee in the return of income, learned Assessing Officer completed the assessment at a loss of ₹ 5, 11, 406/- and in that process may disallowance on account of interest of expenses to the tune of ₹ 4, 63, 35, 631/-and commission and brokerage expenses to the tune of ₹ 73, 59, 279/-. It's not the case of the Revenue that the assessee failed to show these expenses while computing the income are that it is only during the assessment proceedings such a fact is unearthed for the 1st time by the learned Assessing Officer. Assessee furnished in fact all these figures and it is only after considering them the learned Assessing Officer disallowed certain expenses claimed by the assessee.

8. In this context we would like to refer to the decision of the Delhi High Court in CIT vs. DCM Limited(2013) 359 ITR 0101 (Delhi), wherein the Hon'ble High Court of Delhi held that law does not bar or prohibit an assessee for making a claim, which he believes may be accepted or is plausible; that when such a claim is made during the course of regular or scrutiny assessment, liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinized both on facts and in law; that full probe and appraisal is natural and normal; that threat of penalty cannot become a gag and/or haunt an assessee for making a claim which may be

erroneous or wrong, when it is made during the course of the assessment proceedings; that normally, penalty proceedings in such cases should not be initiated unless there are valid or good grounds to show that factual concealment has been made or inaccurate particulars on facts were provided in the computation. Law does not bar or prohibit a person from making a claim, when he knows the matter is going to be examined by the Learned Assessing Officer.

9. Apart from this a similar question had arisen in assessee's own case in the earlier assessment year 2011-12 and considering the facts and circumstances of the case, the 1st appellate authority held that such sort of incidences do not fall within the ambit of either concealment of income or furnishing of inaccurate particulars and it would not be a fit case to levy penalty. Learned CIT(A) followed the same for this year also. We find it difficult to hold such a finding as is illegal or irregular. Having regard to the facts and circumstances as a whole, we are of the considered opinion that the learned CIT(A) reached the correct conclusion in deleting the penalty and no interference is needed with such a finding. We therefore, dismiss the grounds of appeal.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 19th July, 2024.

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 19/07/2024

Pvv/SPS

Copy forwarded to:

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2. Hyma Developers (P) Ltd, 8th Floor, 3rd Block, My Home Hub, Madhapur,
Hyderabad 500081

3. Pr.CIT , Hyderabad.

4. DR, ITAT, Hyderabad.

5. GUARD FILE

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ITAT, HYDERABAD