

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SMT RENU JAUHRI, ACCOUNTANT MEMBER
ITA No. 462/Mum/2024
(Assessment Year: 2011-12)**

M/s. Shree Swaminarayan Enterprises, Plot No.30, Jeevandeep, Opp: Shivdham Complex, Suryodaya Housing Society, Ambarnath (E) Thane-421501. Maharashtra.	बनाम/ Vs.	ITO Ward 2(4), Room No. 25, B Wing, 6 th Floor, Ashar IT Park road no 162,Wagle Industrial Estate Thane (W)-421301 Maharashtra.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABOFS3402K		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Appellant by :	Shri.Niraj Seth.AR
Respondent by :	Shri.Krishna kumar.Sr.DR

सुनवाई की तारीख / Date of Hearing	03/09/2024
घोषणा की तारीख / Date of Pronouncement	03/10/2024

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed U/sec 271(1)(c) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

1. *Having regard to the facts and circumstances of the case and in law, the Ld. Commissioner of Income tax (Appeals)-21 has erred in confirming the order of Assessing officer, imposing penalty of Rs. 9,28,086 under section 271(1)(c) of Income tax Act, unjustified, unwarranted and bad in law stating that the*

Appellant has concealed the particulars of his income whereas the income finally assessed by Ld. AO is the same as has been declared by the appellant i.e. Rs. 30,03,517 in response to notice u/s. 148 of the Income tax Act. It is submitted that:

1.1 The Ld. AO issued the notice u/s. 271(1)(c) on 5.10.2018 which has been responded by the appellant vide its letter dated 21.11.2018. The Ld. AO further issued notice on 24.02.2020 (whereas Ld. AO mentioned the date in his order dtd. 24.10.2021 which was incorrect) which has also been responded by the appellant on 29.02.2020. The Ld. AO has not considered the responses of appellant and has levied the penalty of Rs. 9,28,086 for which this appeal was filed before Ld. Hon. Commissioner of Income tax (Appeals).

1.2 The appellant submits that the penalty order passed by the Ld. AO is time barred as the Ld. AO was required to complete penalty order within six months from the date of receipt of order of Honorable CIT(A) which was passed on 21.08.2018 and the passing of order under Section 271(1)(c) expired on 31.03.2019.

1.3 The Ld. AO has passed the order of penalty u/s 271(1)(c) on 25.03.2022 i.e. after lapse of three years and therefore, the order is void and not tenable.

1.4 The appellant has pointed out this fact before Hon. CIT (A) Faceless, which has not been taken into consideration while passing the order by Hon. CIT (A), though Hon. CIT (A) has mentioned the contents of the submission of Appellant in para 4 (iii) on page 2 of his order.

2. The appellant Craves leave to add, alter, modify or delete such other objections before or during the course of hearing before the Hon'ble' Income Tax Appellate Tribunal, so as to enable the panel to decide on the objections raised by the Appellant as per law.

2. The Brief facts of the case are that, the assessee is a partnership firm and is engaged in the business as builders and developers. The assessee has filed the return of income for the A.Y 2011-12 on 29.09.2011 disclosing a total income of Rs.78,378/- after claiming deduction under Chapter VIA u/s 80IB(10) of the Act. The return of income was processed under Section 143(1) of the Act and the assessment was completed under Section 143(3) of the Act on 25.03.2015 assessing the total income of Rs.54,09,300/-, where the Assessing Officer has disallowed the claim of deduction under Section 80IB(10) of the Act of Rs.27,27,821/-. Subsequently, the Assessing Officer (A.O) found that the assessee has violated the conditions of provisions of Sec. 80IB(10)(e)&(f) of the Act and has reason to believe that the income has escaped assessment and issued notice under Section 148 of the Act and also notice under Section 143(2) of the Act was issued. In compliance, the Ld.AR of the assessee appeared and submitted the details and in compliance to notice u/s c 148 of the Act, the assessee has filed the return of income disclosing a total income of Rs.30,03,514/- after claiming the deduction under u/s c 80IB(10) of the Act of Rs.50,91,09/-. In the assessment proceedings, the A.O. find that the deduction claimed should be disallowed as there is a violation of the provisions of the Act. The A.O. has dealt on the facts, submissions and applicable provisions of the Act and observed that the

assesse is not eligible for claiming deduction under Section 80IB(10) of the Act as the assessee has allotted more than one flat to same individual or any of his relative as prescribed under section 80IB(10) of the Act and the A.O has denied the deduction for the entire project and assessed the total income of Rs.80,94,610/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 08.12.2017.

3. Subsequently, the Assessing Officer has initiated penalty proceedings under Section 271(1)(c) of the Act and issued notice. The AO has relied on the findings of the assessment proceedings u/sec 143(3) r.w.s 147 of the Act. Further against denial of deduction u/sec 80IB(10) of the Act, the assessee has filed an appeal to the CIT(A), Whereas the CIT(A) has directed the assessing officer to calculate the proportionate disallowance of claim of deduction u/sec 80IB(10) of the Act and partly allowed the assessee appeal. In the penalty proceedings in lieu of notice issued, the assessee has submitted explanations on 21.11.2018 and 29.02.2020. Whereas the AO was not satisfied with the explanations and information and observed that the assessee has concealed income by furnishing inaccurate particulars of income and levied penalty of Rs.9,28,086/- and passed the order under Section 271(1)(c) of the Act 25.03.2022.

4. 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, submissions of the assessee and finding of the Assessing Officer in penalty proceedings but has confirmed the action of A.O in levying the penalty and dismissed the assessee appeal. Aggrieved by the CIT(A order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the AO in levying the penalty u/sec 271(1)(c) of the Act overlooking the facts, submissions, reasons for claim of the deduction and judicial decisions. The Ld.AR mentioned that the assessee has been following methodology and accounting standards in the books of accounts and similar claim was made in earlier years and on further appeal, the appellate authorities has directed the the assessing officer to calculate the proportionate disallowance of claim of deduction u/sec 80IB(10) of the Act and no penalty was levied. The Ld. AR emphasized on the merits of the case and the deduction was claimed under a bonafide belief. The Ld.AR substantiated the submissions with paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld.DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in confirming the levy of penalty u/sec 271(1)(c) of the Act overlooking the facts and

submissions that the assessee has been claiming the deduction in the earlier years and on further appeal, the appellate authorities has directed the assessing officer to calculate the proportionate disallowance of claim of deduction u/sec80IB(10) of the Act and no penalty was levied. The Ld. AR has demonstrated the Order Giving Effect (OGE) to the CIT(A) order dated 1.10.2018 placed at Page 50 of the paper book. The Ld. AR emphasized that the assessee has claimed the similar deduction u/sec 80IB(10) of the Act in the A.Y.2012-13 & A.Y.2014-15 and on the similar grounds the relief was granted and no penalty was levied u/s 271(1)(c) of the Act and the Ld.AR demonstrated the details in the paper book-II. Since the facts of the present case are similar to the earlier years hence the penalty cannot be levied. Further the Ld. AR referred to the assessment order u/sec143(3) of the Act for the A.Y 2014-15 on similar disallowance u/sec80(IB)(10) of the Act and on further appeal, the CIT(A) relied on the order of A.Y.2012-13 and deleted the disallowance u/sec 80(IB) of the Act and penalty was not levied. We find in the quantum appeal, the CIT(A) has considered in assessee's own case where the deduction was allowed proportionately dealt at Page 11 Para 5&6 of the order read as under:

"5.0 The only ground of appeal filed the appellant is against the disallowance of deduction claim u/s.80IB(10) of the Act.

5.1 In this case, the AO has disallowed the claim of deduction u/s 80IB(10) of Rs.80,16,236/-, since the appellant has sold/allotted more than one flat to same individual/entity.

5.2 During the course of appellate proceedings, the AR of the appellant has stated that, in appellant's own case for A.Ys.2012-13 & 2014-15, proportionate disallowance has been made as against the disallowance of entire deduction u/s.80IB(10) of the Act, therefore, similarly, the AR of the appellant has requested to disallow on proportionate basis. The AR of the appellant has also placed reliance in the case of Om Swami Smaran Developers (P) Ltd vs. ITO Ward-8(2)(4), Mumbai reported in (2018) 90 taxmann.com 267 (Mumbai-Trib) order dated 31.01.2018 wherein it has held that "Assessee, a developer, had developed a housing project and claimed deduction u/s.80IB(10) - AO disallowed same on grounds that assessee had allotted three flats to a single person, thus, violated conditions of section 80IB(10) which provides that more than one residential unit is a housing project cannot be sold to one person/individual whether merely because assessee had violated conditions of section 80IB(10) (f) in respect of three flats, deduction u/s.80IB(10) could not be disallowed for entire housing project and, assessee was entitled to deduction proportionately in respect of flats which fulfilled all conditions of section 80IB(10) - Held, yes (Para 8) [in favour of assessee]"

The appellant has also filed revised return of income on 09.05.2017, declaring income of Rs.30,03,517/- by proportionately disallowing the claim of deduction in case where more than one flat was sold to an Individual/entity as against the original returned Income of Rs.78,378/-filed on 29.09.2011.

5.3 On similar issue, the undersigned had disallowed proportionately the claim of deduction in cases where more than one flat was sold to an individual/entity in appellant's own case for A.Ys. 2012-13 & 2014-15, therefore, following the decision

consistently, even in the aforesaid year under appeal is disallowed proportionately. Therefore, the AO is directed to calculate the proportionate disallowance of deduction claim u/s.80IB(10) of the Act as directed for A.Y. 2012-13 & 2014-15.

Respectfully following the various Court's decisions including jurisdictional ITAT's decision, the claim of deduction cannot be disallowed for the entire housing project, but the appellant is entitled to deduction proportionately in respect of flats which fulfilled all conditions of section 80IB(10) of the Act except in cases where more than one flat was sold to an individual/entity.

6.0 In the result, appeal of the appellant is partly allowed. Order passed under section 250(read with section 251 of the Income Tax Act, 19616”

7. We find that the claim of the assessee is in consideration of the financial statements and the assessee adopted one of the possible views and has made similar claims in the earlier years and penalty was not levied. We are of the view that penalty cannot be automatic and every addition/disallowance in the assessment proceedings cannot be gate way for levy of penalty and relay on the decision of Hon'ble Karnataka High Court in the case of the CIT Vs. Manjunatha Cotton and Ginning factory, [2013] 359 ITR 564 (Kar). Further the assessee has made a claim under the bonafide belief that it is allowable under the law. We also rely on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroleum Products Ltd., 322 ITR 158(SC) and the observations are read as under:

“271(1) If the A.O or the commissioner (Appeals) or the commissioner in the course of any proceedings under the Act, is satisfied that any person (c) has concealed the particular of his income or furnished inaccurate particulars of such income.

A glance at his provision would suggest that in order to be covered there has to be concealment of the particular of the income of the assessee. Secondly, the assessee must have furnished inaccurate particular of his income. The present is not a case of concealment of the income. That is not the case of the revenue either. However, the Ld. Counsel for revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particular of the income. As per law lexicon, the meaning of the word “particulars” is a details or details (in plural sence); the details of the claim, or the separate item of an account. Therefore, the word “particular used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect on inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The ld. counsel argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income”. We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provisions, the penalty provisions cannot be invoked. By an stretch of imagination, making in incorrect claim in law cannot be tantamount to furnishing in accurate particulars”.

8. We considering the facts, circumstances, submissions and the ratio of the judicial decisions are of the opinion that the penalty cannot be sustained. Accordingly, we set aside the order of the CIT(A) and direct the assessing officer to delete the penalty. And we allow the grounds of appeal in favour of the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 03/10/2024

KRK, PS

आदेश की प्रतिलिपि ढि ग्रेषित/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, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai