

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.2735/Mum/2024
(Assessment Year: 2006-07)**

Narang Land Development Corporation, 407B, Gokul Arcade "A", Swamy Nityanand Marg, Vile Parle (E), Mumbai-400057.	बनाम/ Vs.	ITO-Ward -25(3)(1) R.No.116, Kautilya Bhavan, BKC, Bandra (East) Mumbai - 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAN3465B		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Appellant by :	Shri Jayesh Desai.AR
Respondent by :	Shri Ashok Kumar Ambastha, Sr. DR

सुनवाई की तारीख / Date of Hearing	02/09/2024
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. (a). *The Ld. CIT(A)/ The NFAC has erred in confirming penalty levied u/s 271(1)(c) of the Act amounting to ₹ 11,99,227/-.*

(b) *Your appellant prays that, on the facts and circumstances of the case, the Assessing Officer may be directed to delete penalty levied u/s 271(1)(c) of the Act amounting 11,99,227/-*

3. The appellant craves leave to add, to alter to vary or to amend the above grounds of appeal.

2. The brief facts of the case are that, the assessee is an AOP and is engaged in the business as real-estate developer. The assessee has filed the return of income for the A.Y 2006-07 on 30.10.2006 disclosing a total income of Rs.1,20,65,170/- and the return of income was processed under Section 143(1) of the Act. Subsequently the case was selected for scrutiny and notice under Section 143(2) and 142(1) of the Act are issued. In compliance to the notice, the Ld. Authorised Representative of the assessee appeared from time to time and submitted the details and the case was discussed. The Assessing Officer (A.O) on perusal of the Financial Statements found that the assessee has claimed various expenditure in the profit and loss account and the main object of the Association of Person (AOP) was to purchase the agriculture lands from farmers / land owners for development or to sell.. The assessee has debited land development expenses of Rs. 56,34,244/- incurred during the period from 1995 to 2005 on acquisition of lands. The A.O vide order sheet nothing dated 16.12.2008 required the assessee to submit /produce the bills, vouchers and receipts in support of expenditure claimed. Since the assessee could not submit the details, till the completion of the assessment

proceedings, therefore the Assessing Officer has made the addition of ₹ 56,34,244/-. On the second disputed issue, since the assessee has not provided the details of expenditure for other administrative expenses as per FBT return, the A,O has treated the claim as unaccounted expenditure u/sec69Cof the Act and made addition of ₹ 4,33,721/-.

3. On the third disputed issue, the Assessing Officer found that the assessee has paid compensation to retiring Member of AOP of Rs 15,00,000/- as per the terms of retirement dated 30.11.2003 and claimed as revenue expenditure, the assessee has filed the submissions supporting the claim, but the A,O was not satisfied with the explanations and disallowed Rs.15,00,000/-. On the Last disputed issue, the Assessing Officer found that the assessee has debited to Profit & Loss Account an amount of Rs. 1,89,62,316/- towards payment to farmers for acquisition of land and the details were called. The assessee has filed the detailed reply supporting the claim of expenditure, but the A.O has dealt on the facts, submissions and judicial decisions and rejected the claim and made disallowance u/sec40A(3) of the Act of Rs.1,89,62,316/-. Finally the A.O has assessed the total income of ₹ 3,85,95,450/- and passed the order under Section 143(3) of the Act dated 31.12.2008.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered grounds of appeal, statement of facts findings of the Assessing Officer, and submissions of the assessee, the CIT(A) (i) on the land development expenses claim of Rs. 56,34,244/- has granted partial relief to the extent of 25% of the claim and sustained Rs.38,80,995/- (ii) CIT(A) has sustained the disallowance of compensation paid to retiring Member of AOP of Rs 15,00,000/- and in the other grounds of appeal , the CIT(A) has granted the relief and partly allowed the assessee appeal.

5. Subsequently the Assessing Officer has issued notice under Section 271(1)(c) of the Act and has initiated the levy of penalty on the land development expenses claim sustained by the CIT(A) to the extent @75% i.e. Rs.38,80,995/-. The A.O has issued a show cause notice dated 20.01.2020 on the assessee and since the assessee has not filed any explanations. The Assessing Officer considering the information on record has levied a penalty of Rs.11,99,227/- and passed the order under Section 271(1)(c) of the Act 30.01.2020.

6. 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.

7. At the time of hearing, the Learned. Authorised Representative submitted that the CIT(A) has erred in confirming the levy of penalty, irrespective of the fact that the penalty cannot be levied on the methodology of accounting of land development expenses fallowed and was accepted by the authorities. Further the Ld.AR emphasized that the assessee in response to notice under Section 271(1)(c) of the Act dated 20-01-2020 has submitted the explanations along with the details on 28-01-2020 through E-Portal of the ITBA and the Assessing Officer has overlooked these submissions and observed that no explanations are filed by the assessee. The Ld.AR submitted that penalty provisions shall not be attracted , when part of land development expenses are disallowed on estimation basis and the CIT(A) has granted relief to the extent of @25% of total claim and sustained balance expenses claim @75% in the absence of supporting bills and vouchers . Further the Assessing Officer has not doubted the genuineness of claim of expenditure but has disallowed the expenditure in the absence of production of bills and vouchers. The Ld.AR also mentioned that the assessee has claimed the expenditure under a bonafide belief. The Ld.AR Substantiated the submissions with paperbook and judicial decisions and

prayed for allowing the appeal. Per Contra, the Ld.Dr relied on the order of the CIT(A).

8. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the CIT(A) erred in sustaining the levy of penalty overlooking the submissions and the judicial decisions and the Assessing Officer has not doubted the genuineness of claim of expenditure but has disallowed the expenditure in the absence of production of bills and vouchers. We find that, the assessee is engaged in the business of purchase of agriculture lands from farmers / land owners for development or to sell and in the F.Y.2005-06, the assessee has debited land development expenses of Rs. 56,34,244/- incurred during the period from 1995 to 2005 on acquisition of lands, as the assessee could not submit the details/vouchers till the completion of the assessment proceedings and accordingly the Assessing Officer has made the addition. Whereas the CIT(A) on the land development expenses claim of Rs. 56,34,244/- has granted partial relief to the extent of 25% of the claim and sustained @ 75% i.e Rs.38,80,995/-. In the penalty proceedings, the Assessing Officer has issued a show cause notice dated 20.01.2020 and A.O observed that since the assessee has not filed any explanations and the assessee has furnished the inaccurate particulars of income has levied penalty.

9. Whereas the Ld.AR demonstrated the explanations along with the details filed on 28-01-2020 through E-Portal of the ITBA placed at Page 10 to 24 of the paper book and the Assessing officer has ignored the submissions and passed the order under Section 271(1)(c) of the Act dated 30.01.2020. Prima facie, it is clear that the assessee has complied with the notice and filed the submissions on 28-01-2020 before the penalty order is passed. We considered the facts that the assessee is dealing with the farmers in acquisition of lands being a unorganized market and claiming land development expenses paid from the period 1995 to 2005, the assessing officer has made disallowance with the finding that the assessee has not submitted the details/bills and vouchers and further the assessing officer has not doubted the genuineness of claim of land development expenditure. We are of the view that penalty cannot be automatic and every addition in the assessment proceedings cannot be gate way for levy of penalty and rely 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). Similarly the penalty cannot be levied in case of adhoc disallowance and estimation i.e.75% of the total claim sustained by the CIT(A) in the absence of bills and vouchers. Whereas the assessee has made a claim under the bonafide belief that it is allowable under the law and we rely on the ratio of decision of Hon'ble Supreme Court

in the case of CIT Vs. Reliance Petroleum Products Ltd., 322 ITR 158(SC). 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.

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

Order pronounced in the open court on 03.10.2024.

Sd/-

(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 03/10/2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/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