

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA Nos. 1403 & 1411/Ahd/2024
Asst. Years. 2015-16 & 2016-17**

Assistant Commissioner of Income Tax Circle-3(1)(1), Ahmedabad (Appellant)	Vs	Rajkamal Builders Infrastructure Pvt. Ltd. 54, Park Hill Nr. Heaven Park, Ramdev Nagar, Gujarat-380015 PAN: AABCR0326A (Respondent)
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**Revenue Represented: Shri B.P. Srivastava, Sr.D.R.
Assessee Represented: Shri Mehul K. Patel, A.R.**

Date of hearing : 07-10-2024
Date of pronouncement : 09 -10-2024

आदेश/ORDER

PER BENCH:

These two appeals are filed by the Revenue as against two appellate orders both dated 26.05.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), cancelling the Penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2015-16 & 2016-17.

2. The Grounds of Appeal raised by the Revenue are as follows:

ITA No. 1403/Ahd/2024 for A.Y. 2015-16

(a) The Ld.CIT(A) has erred in law and on facts in deleting the Penalty u/s 271(1)(c) of IT Act of Rs.1,72,57,400/- on quantum additions i.e. Set off of losses of Rs.49,21,774/ while claiming deduction u/s. 80IA and disallowance of claim of deduction u/s. 80IA of Rs. 4,82,31,111/?

(b) The appellant craves leave to add, alter and/or to amend all or ground before the final hearing of the appeal.

ITA No. 1411/Ahd/2024 for A.Y. 2016-17

a) The Ld.CIT(A) has erred in law and on facts in deleting the Penalty u/s 271(1)(c) of IT Act of Rs.1,72,57,400/- on quantum additions i.e. Set off of losses of Rs.49,21,774/ while claiming deduction u/s. 80IA and disallowance of claim of deduction u/s. 80IA of Rs. 4,82,31,111/?

(b) The appellant craves leave to add, alter and/or to amend all or ground before the final hearing of the appeal.

3. At the outset, Ld. Counsel Shri Mehul K Patel appearing for the assessee submitted that the quantum appeals for the above Asst. Years 2015-16 & 2016-17 were deleted by the Co-ordinate Bench vide common order dated 13-05-2022 in ITA Nos. 2201/Ahd/2018 & Others by observing as follows:

“55. We have further considered the judgment passed by the Mumbai Bench in the case of Punit construction company, reported in 92 taxmann.com 28 (Mum. Tri) wherein it has been specifically decided that in terms of provisions of sub Section 5 of Section 80 IA, deduction has to be given unit wise without considering profit or loss of other eligible units. In that view of the matter respectfully relying upon the same we allow this ground of appeal preferred by the assessee with the direction upon the AO to grant relief to the assessee only on the profitmaking unit without setting off loss suffered by other eligible units. Thus, this ground of appeal preferred by the assessee is allowed.

56. As aforesaid, since the above issue is also identical to the assessee's appeals for Asst. Year 2008-09 to 2013-14, 2015-16 and 2017-18, in the absence of any changed circumstances, our finding and decision in the Asst. Year 2007-08 will apply mutatis mutandis in the instant appeals also."

4. Further the Co-ordinate Bench of this Tribunal, in the very same common order deleted the Penalty levied u/s. 271(1)(c) on the very same issue for the earlier Asst. Years 2007-08 to 2010-11 by observing as follows:

"76. Since we have already decided the quantum appeals preferred by the assessee granting relief of the claim of deduction under 80IA(4) of the Act, the penalty arising out of the said quantum proceeding automatically become infructuous.

77. However, we would like to note that the Ld. CITA has deleted the penalty on the ground that the assessee's claim is a bona fide one, all the particulars were fully disclosed in the return itself, supported by audit reports under Section 80IA(7) in Form No. 10 CCB and none of the particulars or figures are found to be untrue or wrong. The disallowance is made only due to a bona fide difference of opinion between the assessee and the Department as to whether the assessee is a 'developer' or 'contractor'. It further appears that relying on the decision passed in the matter of Reliance Petro Products Pvt. Ltd., reported in 322 ITR 158 (SC) the penalty was deleted by the Ld. CIT(A) which according to us is without any ambiguity so as to warrant interference. We, thus, find all the appeals preferred by the revenue as above as devoid of any merit and therefore, dismissed."

4.1. Thus the present appeals filed by the Revenue are liable to be dismissed since Ld. CIT(A) followed the above decision of the Tribunal in assessee's own case for the earlier years.

5. Ld. Sr. D.R. Shri B.P. Srivastava appearing for the Revenue submitted that Revenue had preferred appeal before the Hon'ble High Court but not aware of the status of the above cases.

6. We have heard the rival submissions and perused the materials available on record. In fact, Ld. CIT(A) deleted the above levy of penalty u/s. 271(1)(c) after considering the decision rendered by the Co-ordinate Bench of this Tribunal in ITA No. 2201/Ahd/2018 & others, which has attained finality. Since Ld. A.R. submitted that Department appeal before Hon'ble High Court of Gujarat was also dismissed for "not rectifying the defects" as pointed out by the H.C. Registry. Thus the Grounds of Appeal filed by the Revenue is devoid of merits and the same is liable to be dismissed.

7. In the result, both the appeals filed by the Revenue are hereby dismissed.

Order pronounced in the open court on 09 -10-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 09/10/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद