

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4117/MUM/2024
(A.Y. 2016-17)
ITA No. 4115/MUM/2024
(A.Y. 2017-18)**

ITO-41(2)(3), BKC, Mumbai-400051	v/s. बनाम	Nirmal Developers, Jawahar Talkies Compound, Dr. R. P. Road, Mulund(W), Maharashtra-400080
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AA AFN1817G		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Paresh Deshpande
Respondent by :	None

Date of Hearing	10.10.2024
Date of Pronouncement	17.10.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

These appeals are filed by the assessee against the orders of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 19.06.2024 passed u/s. 250 of the

Income-tax Act, 1961 [hereinafter referred to as “Act”] for assessment years [A.Y.] 2016-17 & 2017-18.

ITA No. 4117/Mum/2024 for AY 2016-17

2. The assessee has raised following grounds of appeal:

1. *Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) was right in law in deleting the penalty knowing the fact that the penalty u/s 271(1)(c) of the Act was imposed and levied on non-business expenditure disallowance.*
2. *Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) erred and ignored the fact that quantum addition in the case of the assessee was confirmed by the Ld. CIT(A) vide order dated 30.09.2019.*
3. *Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) erred and ignored the fact that a bare analysis of the provisions of section 271(1)(c) of the Act makes it evident that where in the case of any proceedings under the Act, the A.O. is satisfied that any person has concealed the particulars of his income, or has furnished inaccurate particulars of such income penal provisions are attracted, and liable for penalty as contemplated u/s 271(1)(c) of the Act. In the instant case”*

3. The brief facts of the case are that the assessee had filed return declaring nil income on 31.12.2016. The assessee is mainly engaged in construction business. The case was selected for scrutiny and assessment was finalized u/s 143(3) of the Act at nil income. However, penalty proceedings u/s 271(1)(c) were initiated as interest expenditure of Rs. 1,58,26,800/- was disallowed. The disallowance so made did not impact the return of income as only the closing work in progress (WIP) was reduced on account of this disallowance.



Subsequently, the penalty u/s 271(1)(c) of the Act was levied by the AO vide order dated 17.02.2022 at Rs. 51,35,005/-.

4. The assessee preferred an appeal before the Ld. CIT(A) who has deleted the penalty vide his order dated 19.06.2024 with the following observations:

“5.3 It is noted that the penalty u/s 271(1)(c) was imposed on the disallowance interest expenditure in the calculation of the WIP. Hence, the same is not sustainable in law in my opinion. Further, it is noted that the appellant in the instant case has neither furnished inaccurate particulars of income nor has concealed any income. Infact the disallowance of interest expense did not lead to any change in the income returned by the appellant.

5.4. In view of the above, the penalty u/s 271(1)(c) is to be deleted and the Assessing Officer is directed likewise. Consequently, the appellant succeeds on the ground of appeal No. 1.”

5. We have gone through the material available on record and heard the Ld. DR. We find no infirmity in the order of the Ld. CIT(A) who has rightly deleted the penalty holding that there was neither furnishing inaccurate of particulars nor concealment of any income on the part of the assessee. Accordingly, the revenue's appeal is stand dismissed.

ITA No. 4115/Mum/2024 for AY 2017-18

6. The assessee has filed following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) was right in law in deleting the penalty knowing the fact that the penalty u/s 270A of the Act was imposed and levied on non-business expenditure disallowance.

2. Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) erred and ignored the fact that the assessee has not preferred an appeal and has accepted the addition made by the AO.

3. Whether on the facts and in the circumstances of the case and law the Ld. CIT(A) erred and ignored the fact that the under- reporting of income results from misreporting of income, the taxpayer shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income. In the instant case,



the assessee has under reported income in consequence of misreporting of income to the extent of Rs.3,83,26,637/- on the issue of addition made on account of interest expenses, for which, the AO had correctly”

7. On similar facts as in the earlier assessment year, disallowance of interest expenses to the extent of Rs. 3,83,26,637/- were made resulting in deduction of WIP which was assessed at Rs. 39,83,69,752/- as against the claim of the assessee at Rs. 43,66,96,389/-. The penalty was initiated for misreporting of the income, even though both the returned income and assessed income were nil. The AO proceeded to impose the penalty u/s 270A vide order dated 15.02.2022 after holding that the assessee had under reported his income in consequence of misreporting of income for the year under consideration. Accordingly, penalty @200% amount of tax payable was levied amounting to Rs. 2,36,85,860/-.

8. Ld. CIT(A) has deleted the penalty vide his order dated 19.06.2024 with the following observations.

“5.4 As per sub section 8 of section 270A, when under reported income is consequence to mis reporting income by any person then penalty is 200% of tax payable on under reported income. Further, sub section 9 of section 270A lays down the various cases which are considered as mis reported income and the sub section 10 section 270A lays down the calculation of tax payable on the under reported income.

5.5 In the case of the appellant it is noted that the facts of the case does not fall into any of the clauses enumerated in sub section 9 of section 270A. Further, since the assessed income of the appellant did not have any addition and the case of the appellant is not of loss hence the computation of tax payable of the under reported income under sub section 10 of section 270A gives zero figure.

5.6 It is further noted that the penalty u/s 270A was imposed on the disallowance interest expenditure in the calculation of the WIP. Hence, the same is not sustainable in law in my opinion. Further, it is noted that the appellant in the instant case has neither furnished under reported income nor it is a case of misreporting of income.



Infact the disallowance of interest expense did not lead to any change in the income returned by the appellant.

5.7. In view of the above, the penalty u/s 270A(8) is to be deleted and the Assessing Officer is directed likewise. Consequently, the appellant succeeds on the ground of appeal No. 1.”

9. After carefully consideration of the fact of the case, we find no infirmity in the order of the Ld. CIT(A) deleting the penalty. Accordingly, the revenue's appeal is dismissed.

10. In the result, both appeals of the revenue are dismissed.

Order pronounced in the open court on 17.10.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 17.10.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

