

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI NARENDRA P. SINHA, ACCOUNTANT MEMBER**

I.T.A. No.634/Ahd/2016
(Assessment Year: 2010-11)

Income Tax Officer, Ward-5(2)(1), Ahmedabad	Vs	M/s. BGSTPL-MSKEL(JV), 2 nd Floor, “MSK”, Ambawadi, Ahmedabad-380015
[PAN No.AAAA7618L]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Devina Patel, AR
Respondent by:	Shri Rignesh Das, Sr. DR

Date of Hearing	23.12.2024
Date of Pronouncement	24.12.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-5, (in short “Ld. CIT(A)”), Ahmedabad vide order dated 04.12.2015 passed for A.Y. 2010-11.

2. The Revenue has raised the following grounds of appeal:

“1. The Ld. CIT(A) has erred in law and on facts in deleting the penalty of Rs. 65,57,761/- imposed u/s 271 (1)(c) of the Act.

2. On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

3. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and the order of the Assessing Officer be restored to the above extent.

4. The Appellant craves leave to add, alter and/or to amend all or any of the ground before the final hearing of the appeal.”

3. The brief facts of the issue for consideration before us is that during the course of quantum proceedings, the assessee had claimed

deduction under Section 80IA(4) of the Act, which was disallowed by the Assessing Officer on the ground that the assessee is not a “developer” but a contractor who worked under the control of Airport Authority of India. The order of the Assessing Officer was confirmed by Ld. CIT(A). the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act for concealment of income and furnishing inaccurate particulars of income. The order passed under Section 271(1)(c) of the Act by the Assessing Officer, was also confirmed by Ld. CIT(A).

4. The assessee is in appeal before us against the aforesaid penalty order confirmed by Ld. CIT(A) under Section 271(1)(c) of the Act. The Counsel for the assessee submitted that now the issue regarding grant of deduction under Section 80IA(4) of the Act has been decided in favour of the assessee for the impugned assessment year in ITA Nos. 2498/Ahd/2013 & 828/Ahd/2016 and ITA No. 829 & 830/Ahd/2016 for A.Ys. 2010-11 & 2011-12 vide order dated 07.11.2024. Therefore, since the quantum proceedings have now been decided in favour of the assessee, there is no basis for levy of penalty under Section 271(1)(c) of the Act for concealment of income or furnishing inaccurate particulars of income. The order passed by ITAT dated 07.11.2024 has been produced before us for our records. It would be useful to reproduce the relevant extracts of the order for ready reference:

“9.13 All these documents filed by the assessee which are part of record, contentions raised before us as well case laws relied upon the assessee, clearly point out that the assessee is a developer and not merely works contractor and is eligible and entitled' for deduction u/s. 80-IA(4) of the Act. Thus, keeping in view the aforesaid facts and circumstances of the case and judicial pronouncements relied upon by the assessee, we hold that the assessee is a developer within the

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meaning of section 80-IA(4) and is eligible for deduction u/s. 80-IA(4). Thus, we allow the claim of the assessee for deduction u/s 80IA(4). We order accordingly.

10. In the result, appeal filed by the assessee in ITA no. 2498/Ahd/2013 for assessment year 2010-11 stands allowed.”

5. Since, the quantum proceedings have been decided in favour of the assessee, we hold that penalty under Section 271(1)(c) of the Act is not liable to be sustained.

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

This Order pronounced in Open Court on 24/12/2024

Sd/-
(NARENDRA P. SINHA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(True Copy)

Ahmedabad; Dated 24/12/2024

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad