

आयकर अपीलीय अधिकरण, "डी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
श्री बी. आर. बास्करन, लेखा सदस्य एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE S/SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.1821/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

Asst. Commissioner of Income Tax Central Circle 39 R.No.32(1), Ground Floor, Aayakar Bhavan, Mumbai - 400020	बनाम/ Vs.	M/s. Raima Realty Pvt. Ltd. Office No.B 106, Sector -11, Dronagiri - 400702
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCR4570Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Anuj Kisnadwala & Ramesh Jain
Department by:	Shri A. Ramchandran

सुनवाई की तारीख / Date of Hearing: 07.09.2015
घोषणा की तारीख /Date of Pronouncement: 24.02.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 18.12.2013 passed by the Commissioner of Income Tax (Appeals)-41, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2009-10 wherein the penalty imposed u/s. 271AAA has been ordered to be deleted.

2. The assessee belongs to Jai Corporation Group of cases. Jai Corporation Group is a partner in two major upcoming Special Economic Zones (SEZ), being developed in the vicinity of Mumbai, viz. Navi Mumbai Special Economic Zone (NMSEZ) and Mumbai Special Economic Zone (MSEZ). The Group has purchased vast tracts of land in the vicinity to these SEZs with an objective to develop the lands into satellite townships in these areas with necessary amenities and infrastructure anticipating potential price rise and good returns for their investment in future. These lands have been purchased in the names of about 100 companies including the appellant. The real estate operations of the Group are handled by Mr. Virendra Jain, Mr. Gaurav Jain and Mr. Dilip Dherai. On 05.03.2009 search and seizure operation u/s. 132 of the Income Tax Act, 1961(in short “the Act”) was carried at the office premises of the group and its close associates and residential premises. During the search and seizure operation an unexplained expenditure to the tune of Rs.43.46 crores was estimated and apportioned among all land companies and in case of assessee addition to the tune of Rs.1,89,56,000/- was made u/s. 69 of the Act. The said addition was confirmed upto the order passed by learned CIT(A) dated 01.11.2011. thereafter, show cause notice was served and penalty to the tune of Rs.18,95,600 was imposed u/s. 271AAA. On appeal learned CIT(A) heard the case on merits and deleted the penalty imposed u/s. 271AAA of the Act. Feeling aggrieved the revenue is before us.

3. We have heard the arguments advanced by the learned representative of the parties and perused the record carefully. The

learned representative of the department has argued that the learned CIT(A) has deleted the penalty to the tune of Rs.18,95,600/- imposed u/s. 271AAA is wrongly and illegally, therefore, the order dated 18.12.2013 is wrong against law and facts and is liable to be set aside. On the other hand the learned representative of the assessee refuted the said contentions. Keeping in view of the arguments advanced by the learned representative of the parties and perusing the record carefully, it is observed that learned CIT(A) has deleted the penalty imposed by the Assessing Officer u/s. 271AAA on the ground of that the Tribunal vide its order dated 22.03.2013 has set aside the assessment u/s. 153C and also deleted the addition made u/s. 69C. When the assessment proceeding giving rise to penalty u/s. 271AAA has been quashed by the Tribunal, therefore, the learned CIT(A) has rightly deleted the penalty imposed u/s. 271AAA of the Act. In view of the said circumstances we are of the view that the learned CIT(A) has passed the order dated 18.12.2013 in question judiciously and correctly which does not required to be interfere with at this appellate stage.

4. In result the appeal of the revenue is hereby dismissed.

Order pronounced in the open court on 24th February, 2016

Sd/-

Sd/-

(B.R.BASKARAN)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24th February, 2016

MP

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai