

आयकरअपीलीयअधिकरण, मुंबईन्यायपीठ‘बी’मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL“B” BENCH, MUMBAI

श्रीजी.एस.पन्नू, लेखा सदस्य, एवंश्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकरअपीलसं/I.T.A. No.1365/Mum/2014
(निर्धारणवर्ष / Assessment Year: 2009-10)

Asstt. Comm. Of the Income Tax Central Circle 39 R. No. 32(1), Ground Floor, Aayakar Bhavan, Mumbai - 400020	बनाम/ Vs.	M/s. Neel Land Pvt. Ltd. DN-215, Second Floor, Plot No.6, Sector - II, Dronagiri - 400702
स्थायीलेखासं. /जीआइआरसं. / PAN/GIR No. : AACCN5784F		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Manoj Kumar
Assessee by:	Shri Ramesh Jain

सुनवाईकीतारीख / Date of Hearing: 13.10.2016
घोषणाकीतारीख /Date of Pronouncement: 25.01.2017
आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 29.11.2013 passed by the Commissioner of Income Tax (Appeals)-41, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the assessment year 2009-10.

2. The revenue has raised the following grounds:-

- “1. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting penalty levied u/s.271AAA without appreciating the fact that assessee had failed to explain the source of the unexplained expenditure in cash which is clearly unaccounted and undisclosed income outside the regular books of account during the assessment proceedings and the assessee had failed to admit the undisclosed income and specify the manner in which such income had been derived and also failed to substantiate the manner in which the undisclosed income was derived.*
2. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting penalty levied u/s.271AAA without appreciating the fact that the substantive addition in the case of the assessee u/s.69C was upheld by Ld. CIT(A) 41, Mumbai and where it was confirmed that cash payments have been received by the assessee company.*
3. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting penalty levied u/s.271AAA stating that the addition u/s.69C does not survive since the issue of action u/s.153C and the quantum addition made u/s.69C of the I.T.Act, 1961 has been deleted by the Hon'ble ITAT, Mumbai without appreciating the fact that department has preferred an appeal against the order of the Hon'ble ITAT, Mumbai before the Hon'ble Bombay High Court and the issue have not attained finality.”*

3. The brief facts of the case are that the appellant company i.e. Neel Land Pvt. Ltd. was belonging to Jai Corporation Group of cases. The Jai Corp. Ltd. was 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 purchased vast tracts of

land in the vicinity of these SEZs with an objective to develop the lands into satellite townships in these areas with necessary amenities and infrastructures anticipating potential price rise and good returns for their investment in future. The land was purchased in the name of 100 companies including appellant. The real estate operations of the group was headed by Shri Virendra Jain, Shri Gaurav Jain and Shri Dilip Dherai. A search and seizure operation u/s.132 of the Income Tax Act, 1961(in short “the Act”) was carried out at the office premises of the group and its close associates and residential premises of its key person on 05.03.2009. During the course of search, incriminating evidence was found and seized which proved the fact that the appellant had made cash payments over and above the cheque payments entered in the books of accounts for the purchase of land. The factum of cash payments was confirmed by Shri Dilip Dherai in the course of search. Subsequently, after the expiry of two and half months from the date of search, Shri Dilip Dherai filed an affidavit before the Dy. Director of Income Tax (Inv.) on 14.05.2009 affirming that the statement recorded during the course of search on 05.03.2009 was taken forcibly and under pressure. The scrutiny of the seized documents was conducted and unexplained expenditure incurred in cash on acquisition of lands estimated to the tune of Rs.4.46 crores. The said amount was apportioned amount all the companies in the ratio of cost of the land purchased by the said companies up to 28.11.2008. On the basis of the said apportionment, the addition of

Rs.42,42,000/- was made in case of the appellant u/s.69 of the Act vide assessment order dated 29.12.2010. Since the appellant failed to submit the any documentary evidence to rebut the entries of seized papers and statement recorded during the course of search at the premises of Shri Delip Dherai, therefore, the said addition was confirmed by the CIT(A) vide his order dated 01.11.2011. The penalty proceedings was initiated by initiation of the notice dated 29.12.2010. After giving an opportunity of being heard to the assessee, the penalty to the tune of Rs.42,42,000/- was levied. Feeling aggrieved the assessee filed an appeal before the CIT(A) who deleted the said penalty, therefore the revenue has filed the present appeal before us.

ISSUE NO.1 TO 3:-

4. Issue no.1 to 3 are interconnected, therefore are being taken up together for adjudication. Infact in all the issues the revenue has raised the point of deletion of penalty levied by the Assessing Officer by virtue of order dated 12.02.2013. Before going further, it is necessary to advert the finding of the CIT(A) on record:-

“3.3 I have considered the submissions made on behalf of the appellant and also perused the materials on record. It is observed from the record that pursuant to assessment u/s.153C, penalty u/s.271AAA was imposed by the A.O.

on the appellant in respect of unexplained expenditure of Rs.42,42,000/- towards purchase consideration of lands which was deemed to be the undisclosed income of the appellant. It is observed that the Hon'ble ITAT, Mumbai Bench vide its consolidated order dated 22.03.2013 has not only held the action taken u/s.153C in case of land companies including the appellant to be bad in law (for want of necessary satisfaction) but also deleted the additions made u/s.69C on merits. The relevant extracts of the said order are reproduced below:-

“18.....In the present case, impugned documents were not found from the possession of the assessee but was found from the possession of a third person i.e.Shri Dilip Dherai. Mere mention of the names of the villages where the companies may have purchased lands would not given any basis to assume/presume/surmise that the name of the companies are mentioned in the impugned documents. The very foundation of Sec.153C has been shaken by not fulfilling the condition precedent for the issue of notice.....

19. Considering the entire facts and circumstances in the light of the impugned seized

documents, we have no hesitation to hold that action taken u/s.153C of the Act is bad in law.....

22. ...The entire dispute revolves around the alleged cash payment amounting to Rs.43 crores approx.. and which has been added u/s.69c of the Act....

23.the assessee must have been found to have incurred any expenditure to invoke the provisions of Sec. 69C of the Act. However, the allegations made by the lower authorities are not supported by actual cash passing hands. The entire additions are based on the seized documents and no other material has been adverted to and which could conclusively show that the huge amount of the magnitude mentioned in the seized documents travelled from one side to the other. The Revenue authorities have not brought a single statement on record of the vendors of land in different villages. None of the seller has been examined to substantiate the claim of the revenue that extra cash actually changed hands.

24.in the present case, none of the sellers have been examined by the A.O. to strengthen his views that cash has been paid over and above the registered amount. There is not even a single document / evidence of parties involved in the sale of land at different villages brought on record to show that an amount other than the payment of consideration has changed hands. No confession from the sellers have been brought on record.....

25.In our considerate view (sic), there being no evidence to support the Revenue's case that a huge figure, whatever be its quantum, over and above the figure booked in the records and accounts changed hands between the parties, no addition could therefore be made u/s.69C of the Act to the income of the assessee considering the entire facts brought on record, we have no hesitation to hold that even on merits, no addition could be sustained.

26. Since we have allowed the issue in the case of the present assessee on both counts i.e. on legal issues and on merit and the issue involved in all other appeals of other assesses are similar and

identical, though quantum may differ, for similar reasons, we quash the assessments and delete the additions on merit as well as on point of law in all other cases also.”

From perusal of the aforesaid order, it is very clear that the Hon’ble Tribunal has not only quashed the assessments framed u/s.153C but also deleted the additions made u/s.69C on merits in case of land companies including the appellant. Once the assessment proceedings giving rise to penalty u/s.271AAA is itself quashed, the very foundation for imposition of penalty becomes non-existent and hence the impugned penalty order in respect of such assessment would not survive. Similarly, there would be no justification for sustaining the penalty levied u/s.271AAA of the Act, once the quantum addition on basis of which penalty was levied by the A.O. has already been deleted of Rs.4,24,200/- levied on the appellant u/s.271AAA of the Act is hereby deleted. Thus, the ground of appeal raised by the appellant are hereby allowed.”

5. On appraisal of the said order, it is quite clear that the Hon'ble Income Tax Appellate has quashed the assessment order u/s.153 of the Act and also deleted the addition made u/s.263 of the Act in case of the assessee company and in case of other group companies also. Therefore, the CIT(A) has deleted the penalty imposed by the Assessing Officer by virtue of order dated 12.02.2013. The CIT(A) deleted the penalty on the ground of that the quantum has been set aside by the Hon'ble Income Tax Appellate Tribunal, Mumbai in the assessee's own case by virtue of order dated 22.03.2013. Therefore, no doubt in the said circumstances, no penalty is liable to be sustainable in the eyes of law. Accordingly, the CIT(A) has passed the order judiciously and correctly which is not required to be interfere with at this appellate stage.

6. In the result appeal filed by the revenue is hereby Dismissed

Order pronounced in the open court on 25th January,
2017

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25th January, 2017

MP

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai