

आयकर अपीलीय अधिकरण, "सी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.257/M/13

(निर्धारण वर्ष / Assessment Year: 2006-07)

Om Sairam Developers A-401, Sweta Park, Daulat Nagar, Road No.2, Borivali (E), Mumbai - 400066	बनाम/ Vs.	Income Tax Officer 25(2)(4), C-11, Pratyakshar Bhavan, 1 st Floor, Bandra-Kurla Complex, Bandra (E), Mumbai - 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFO8056G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri Rajiv Thakkar
Department by:		Shri Shiddaramappa K. Navar

सुनवाई की तारीख / Date of Hearing: 09.12.2015
घोषणा की तारीख /Date of Pronouncement: 16.03.2016

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has challenged the order dated 05.10.2012 passed by the learned Commissioner of Income Tax (Appeals) 35, Mumbai [hereinafter referred to as the learned "CIT(A)"] relevant to the A.Y.2006-07 wherein the learned CIT(A) confirmed the penalty to the tune of Rs.4,17,220/- u/s. 271(1)(c) of the Income Tax Act, 1961.

2. The assessee has raised the following ground:-

1. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining the penalty Rs.4,17,220/- levied under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) by the learned Assessing Officer on account of disallowance of Rs.10,59,230/- in respect of Project Vrindavan Complex on the ground that the appellant has furnished inaccurate particulars and concealed income.

2. The learned Authorities failed to discharge the burden cast on them to prove that the assessee has furnished inaccurate particulars or concealed particulars of income before levying penalty u/s. 271(1)(c) of the Act.

3. The learned Authorities ought not to have levied penalty in the absence of a finding of malafide conduct on the part of the assessee.

3. The appellant is a firm and its assessment was completed on 26.12.2008 determining total income to the tune of Rs.15,04,694/- as against the returned loss to the tune of Rs.9,57,605/-. After the scrutiny assessment the Assessing Officer made the following additions:-

1. Rs.10,59,230/- in respect of Project Vrindavan Complex
2. Rs.5,00,000/- in respect of Project Sai Ashirwad
3. Rs.13,77,556/- under section 40(a)(ia) of the Income Tax Act, 1961

3.1 After the above said addition the appellant went in the appeal before the learned CIT(A) and the learned CIT(A) deleted the addition no.2 and 3 and upheld the addition in connection with the Vrindavan complex mentioned above. Thereafter, Assessing Officer initiated the penalty proceeding and imposed the penalty to the tune of Rs.4,17,220/-. Thereafter, under appeal the learned CIT(A) upheld the penalty order passed by the Assessing Officer. Feeling aggrieved the assessee is before us.

4. We have heard the arguments advanced by the learned representative of the parties and have gone through the file. In the instant case penalty has been imposed on the ground of addition sustained by the learned CIT(A). The finding of the learned CIT(A) in this connection is reproduced as under:-

(i) a sum of INR 5,39,514/- represents sale proceeds of Flat No. C-403 was to be adjusted against deposit of INR 21,00,000/- to be received from M/s. Kalaria Construction, but the same was inadvertently included in the sale of flats during A.Y. 2005-06 and was offered to tax and such mistake was rectified during the year in the books of the Appellant.

(ii) similarly, the appellant wrongly treated the repayment of deposit of INR 7,00,000 out of the total deposit of INR 21,00,000 by M/s. Kalaria Constructions by reducing the

construction cost during the period of A.Y. 2005-06. As a result higher income was offered in A.Y.2005-06, however the Appellant rectified such mistake during this year.

iii) Rs.1,80,284/- being liability payable to M/s. Kalaria Construction in respect of the above project was not longer payable hence written off and reduced from the expenses in respect of the said project.

4.1 It is argued that the claiming of expenses by rectifying their accounting mistake or error added in earlier year accounts is not the case of furnishing inaccurate particulars of his income and the concealment of particulars of his income. It is also argued that the facts and circumstances of the present case leads to the facts and circumstances that the assessee was not liable to be pay the tax and was eligible to deduction u/s.80IB(10). The ground to levy the penalty are the above said three additions vide which two have been deleted and one addition regarding the Vrindavan Project has been sustained. The learned CIT(A) in the appeal of assessment order gave the above mentioned finding which speaks about the mistake of assessee and got rectified lateron. No doubt when this fact have enumerated in the judgement passed by the learned CIT(A) then in the said circumstances apparently the case of the appeal does not fall within the ambit of concealment of income or furnishing of inaccurate particular of his income. In this regard

there are catina of judgements passed by the courts of law out of which some are mentioned below i.e. T.Ashok Pai Vs. Commissioner of Income Tax [2007] 292 ITR 11 (SC), Commissioner of Income Tax Vs. Somany Evergree Knits Ltd. [2013] 352 ITR 592 (Bombay High Court), Commissioner of Income Tax Vs. Sidhartha Enterprises [2010] 322 ITR 80 (P&H HC) and Commissioner of Income Tax and another Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Karnataka High court). In view of the peculiar facts and circumstances of the case and in view of the law relied by the assessee we are of the view that when the case of the assessee is in connection with the correction of accounts on account of mistake then no penalty is leviable in accordance with law accordingly we set aside the order of learned CIT(A) and delete the penalty.

5. In the result, **appeal of the Assessee is hereby Allowed.**

Order pronounced in the open court on 16th March, 2016.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16th March, 2016

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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