IN THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 6993/Mum/2019 (Assessment Year 2010-11)

Shakeel Ahmed Mohamed Yuns Ansari 101/1, Hari Jairam Chawl, Maulana Azad Road Madanpura Mumbai-400 011 PAN : AGUPA3796R	Vs.	ITO-21(3)(3) Mumbai
(Respondent		(Appellant)

Assessee by	None
Department by	Shri Pavan Beerla
Date of Hearing	30.08.2021
Date of Pronouncement	02.09.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-33 dated 16.08.2019 and pertains to Assessment Year 2010-11.

2. The grounds of appeal read as under :

> 1. On the facts and in the circumstances of the case, the learned CIT (Appeals) erred in confirming the levy of penalty of Rs.9,66,000/- u/s,271(1)(c) of the Act, which is contrary to the facts and evidence on record and hence, it should be deleted.
> 2. On the facts and in the circumstances of the case, the learned CIT(Appeals) failed to appreciate that, there is no concealment of any income and hence the penalty levied be cancelled.
> 3. The learned CIT(Appeals) failed to appreciate that, the appellant had disclose true and correct details of its claim and there is no concealment of the same.
> 4. The appellant prays that, the claim of deduction made u/s.80 IB (10) was on technical ground rejected and hence, the penalty levied be cancelled.

3. Brief facts leading to the levy of penalty are as under:-

> 2. The assessee is an individual engaged in the business of redevelopment of residential building under the name & style of Raj Constructions. The return of income for the year 2010-11 was filed on 14/10/2010 declaring total income of Rs 9,92,510/- after availing deduction of Rs 31.26.206/- u/s 80IB(10) of I.T.Act.1961. The assessee has constructed a building and the project has been completed during the year and income from the same of Rs. 31,26,206/- was claimed as deduction u/s 80IB(10). The area of the plot on which the building project was completed during the year is 18,215 sq. ft. i.e. less than 1 acre. The case was selected for scrutiny wherein the AO disallowed deduction claimed u/s.80IB(10) on the ground that the project developed by the assessee was not covered by Board Notification and the said finding was confirmed by the CIT(A) vide order dated 23/09/2013 wherein the disallowance of Rs 31,26,206/- was confirmed.

4. AO also levied 100% penalty upon the same. Upon assessee's appeal Ld.CIT(A) noted assessee's submission as under:-

> 4. During the course of appellate proceedings, the AR of the appellant has filed written submissions dated 07/8/2019 wherein it was stated that the assessee filed return of income along with tax audit report claiming deduction u/s 80IB(10) under the guidance of the auditor. No other addition was made by the AO or CIT(A). Appeal was filed in ITAT under the professional guidance of the Auditor. However, assessee got second written opinion on 4.3.2014 from CA Anant Pai & Co. and has withdrawn appeal in Tribunal. Both AO and CIT(A) had disallowed deduction u/s 80IB(10) solely on violation of proviso to Section 80IB(10)(b). The deduction claimed was only under professional guidance of the auditor who are specialized in the taxation laws. He relied on the decision of the Supreme Court in case of CIT vs. Reliance Petroproducts P. Ltd. in support of his view that a mere claim of deduction does not tantamount to concealment of income or furnishing of inaccurate particulars of income. The appellant has also filed a copy of the aforesaid judgement along with written opinion, tax audit report and order of CIT(A).

5. Ld.CIT(A) proceeded to confirm the penalty by elaborately dealing with the merit of the addition. He has held as under:-

> 5. I have carefully gone through the penalty order of the AO as well as the written submissions filed by the AR of appellant. There is no dispute that the plot area of the

housing project in case of appellant was less than 1 acre. The decision of the Bombay High Court in case of CIT Vs. Vandana Properties [2010] 353 ITR 36 [Bom] does not support the claim of the appellant in any manner as the facts are entirely different. In case of Vandana Properties, the plot area was more than one acre and the issue was allowability of deduction u/s 80IB(10) on a new housing project when that plot had some existing housing projects. It is not desirable to pick out a word or a sentence from any decision and the judgement must be read as a whole. In Vandana Properties, the present issue of allowability of deduction u/s 80IB(10) was not at all adjudicated.

5.1 In the case of the appellant, there is nothing which shows that even the locality in which his housing project was situated was declared as a slum area by Slum Regulatory Authority. The permission granted to the assessee for re-development by the local authority was under DCR 33(7) and not under DCR 33(10) as applicable for slum re-development. Hence, there is no case for his housing project being covered under CBDT Circular of 3.8.2010 as the same was applicable only for slum re-development projects permitted under DCR 33(10).

5. 2 To *conclude* the apopellant was not at a/I eligible for special incentive carved out for slum re-development housing projects by waiving the requirement of minimum plot **area** of 1 acre which is applicable in general cases. As the language of section 80IB are clear and unambiguous, there is no doubt that the claim of the appellant made u/s 8016(10) were without any justification whatsoever and without any bona fide reasons. The claim of the appellant was patently wrong and inadmissible. This is not a case where conflicting decisions of various High Courts were available on the date of filing of return. In fact, the decision of Vandana Properties is also subsequent to filing return on 14.10.2010.

5.3. Apart from that I find that the reliance of the appellant in the case of Reliance Petro Products Pvt. Ltd. in 322 ITR 128 is misplaced. Hon'ble Supreme Court in this case has held in para 9 that

> *"9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined* as:—
>
> > *"not accurate, not exact or correct: not according to truth; erroneous; as an inaccurate statement, copy or transcript."*
>
> *We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which ore not accurate, not exact or correct not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere*

> *making of the claim, which is not sustainab/e in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars."*

5.4 From the above, it is clear that in the aforesaid case there was a finding of the fact that no details supplied by the assessee in its return of income was found to be incorrect or erroneous or false by the Revenue. However, in the instant case, the AO has clearly given the findings that the claim of the deduction u/s 80IB made in the return of income was incorrect or false. The focus of the AR of the appellant on the phrase used by the Hon'ble Supreme Court - *"A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assesses".*- cannot be read in isolation. In the instant case, during the assessment as well as the penalty proceedings, it was brought on record that the appellant had made the false claim which was not admissible in law. Hence, it will tantamount to furnishing of inaccurate particulars of income in the return of income filed by the appellant during A.Y. 2010-11.

5.5 In the light of discussion made in the preceding paragraphs, in my considered opinion, the penalty of Rs.9,66,000/- imposed by the AO for furnishing inaccurate particulars of income is justified and needs no interference. Hence, the levy of penalty u/s 271(1)(c) is confirmed. Thus, grounds of appeal are dismissed.

6. Against the above order, assessee is in appeal before us.

7. We have heard the Ld. Departmental Representative and perused the records.

8. We have carefully considered submissions. Section 271(1)(c) of the Act empowers the Assessing Officer to impose penalty in the course of proceedings of the Act, if he is satisfied that the assessee has concealed his income or furnished inaccurate particulars of such income. In other words, in order to levy penalty, two pre-requisites are required to be fulfilled, namely, that the assessee has concealed the particulars of income or has furnished inaccurate particulars of such income. It is also a well settled position that the assessment proceedings and the penalty proceedings are separate and independent proceedings. It has been held by Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co. vs. CIT, (1980) 121 ITR 0457 (SC) that the

findings in the quantum assessment proceedings are not conclusive to determine the Levy of penalty u/s.271(1)(c) of the Act.

9. We note that the penalty in this case has been levied upon the denial of the assessee's claim under section 80IB. It is not the case that assessee's claim was ex-facie bogus. As a mater of fact, the Ld.CIT(A) in dealing with the penalty order has distinguished the assessee's reliance upon Hon'ble Bombay High Court decision in the case of Vandana Property(supra) by holding that assessee is picking lines from the above Hon'ble jurisdictional High Court decision. After having held so Ld.CIT(A) has misled himself in distinguishing the assessee's reliance upon the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts. In the said case Hon'ble Supreme Court has expounded that mere denial of an assessee's claim cannot fasten upon the assessee liability of penalty u.s 271(1)(c), unless the assessee's claim is found to be ex-facie bogus. In our considered opinion, the assessee's claim by no stretch of imagination can be said to be apparently bogus claim. Hence, in our considered opinion, on the facts and circumstances of the case authorities below have erred in levying the penalty u.s. 271(1)(c) upon the assessee.

10. Moreover, the only aspect in the present case is that the claim of deduction was made, which has not been allowed because of the non-satisfaction of the requirement of size of the project. We note that in similar situation the Bombay High Court in the case of CIT vs. Petels Engineers Limited (142 taxmann.com 433) has held that penalty u/s. 271(1)(C) is not exigible on denial of claim u/s 80IA. Therefore, levy of penalty in the present case is not justified on this count too.

11. Accordingly, in the background of aforesaid discussion and precedent, we set aside the orders of authorities below and delete the penalty.

12. In the result, assessee's appeal stands allowed.

Pronounced in the open court on 02.09.2021

Sd/-	Sd/-
(RAVISH SOOD)	(SHAMIM YAHYA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai; Dated : 02/09/2021
Sr.PS. Thirumalesh
Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai