

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI SHAMIM YAHYA, AM AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 4712/Mum/2019
(Assessment Year: 2012-13)

LKP Finance Limited 203, Embassy Centre, Nariman Point, Mumbai-400 021	Vs.	Dy. CIT-3(2)(1) Room No. 608, Aayakar Bhavan, Mumbai-400 020
PAN/GIR No. AAACL 2401 P		
(Appellant)	:	(Respondent)
Appellant by	:	Ms. Dinkle Hariya
Respondent by	:	Shri Ajay Pratap Singh
Date of Hearing	:	01.04.2021
Date of Pronouncement	:	03.06.2021

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-9, Mumbai ('Id.CIT(A) for short) dated 18.06.2019 and pertains to the assessment year (A.Y.) 2012-13 and the issue raised is confirming the levy of penalty of Rs.9,52,784/-.

2. Brief facts of the case are that the assessee filed its return of income on 26.09.2012 declaring total income of Rs.7,11,220/- under the normal provisions of Act and Rs.7,45,11,693/- under section 115JB of the Act. Thereafter, the case was selected for scrutiny vide notice u/s.143(2) of the Act on 07.08.2013. the assessee revised the return of income on 20.01.2014 to revise the book profit u/s.115JB to Rs.7,06,49,038/-. Assessment u/s. 143(3) was completed on 30.12.2016 by making addition on account of

provision for standard asset of Rs.31,75,949/- which was claimed as expenditure but was not added back in the book profit for computation of income u/s.115JB. The A.O. initiated penalty proceedings for furnishing of inaccurate particulars of income.

3. During the penalty proceedings, the A.O. noted that the assessee failed to add back the expenditure on account of provision of standard assets which was not an allowable expenditure. The assessee argued that the computation of income was revised by the assessee on its own during the assessment proceedings and the mistake of not adding back the provision for standard asset was inadvertent and bonafide mistake which was corrected by it on its own. The A.O. in response commented that the revision of the computation of income was only after the initiation of scrutiny proceedings and therefore not purely suo motto and bonafide. As per the A.O., the revision of computation of income by the assessee was a result of scrutiny assessment. Therefore, the A.O. levied penalty of Rs.9,52,784/- u/s.271(1)(c) of the Act for filing of inaccurate particulars of income.

4. The Id. CIT(A) also confirmed the penalty order agreeing with the view taken by the A.O. He held that the assessee's claim of bonafide mistake is not sustainable. He also rejected the submission that there was no concealment by observing that assessee has not made the disclosure of provision for standard assets in any of the enclosures with the computation of income.

5. Against this order, the assessee is in appeal before us.

6. We have heard both the counsel and perused the records. As it is evident from the facts of the case, the assessee in the computation of income has not added back the

provision for substandard asset for the purpose of sec 115JB of the Income Tax Act. When the matter was taken up for scrutiny, after 8 months into the scrutiny proceedings the assessee revised computation of income, adding the provision for substandard asset. The claim of the assessee was that the assessee has suo moto revised the computation. This has been rejected by the authorities. In this regard, we note that after the commencement of scrutiny proceedings for 8 months, there is no whisper that the A.O. has pointed out this issue. Hence, the assessee's claim of suo moto revision is not unbelievable. Furthermore, not adding the provision for standard asset is only relevant to the computation of income for book profit. In the profit and loss account in the financial records, there is requirement that the said amount is to be reduced from the profit and loss account. Hence, there is no case that the profit and loss account prepared is not as per law. Moreover, the provision for standard asset is duly reflected in the profit and loss account. It cannot be said that it was not a mistake of the assessee not to add back the same under section 115JB. Once having disclosed the provision for substandard asset which is a normal feature in the preparation of profit and loss account, it will certainly be a mistake not to add the same under the 115JB computation of income. The Id. CIT(A) has completely erred in observing that the provision for substandard asset was not disclosed in any of the enclosures of computation of income. We find that the Id. CIT(A) has misled himself. The assessee's claim that it was a genuine mistake and the assessee has suo moto revised the same during the assessment proceedings is cogent. The authorities below have not been able to cogently rebut the submission of the assessee. Accordingly, in the background of the aforesaid discussion, we set aside the orders of the authorities below and delete the penalty.

7. In the result, this appeal by the assessee stands allowed.

Order pronounced in the open court on 03.06.2021

Sd/-

Sd/-

(Pavan Kumar Gadale)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 03.06.2021

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai