

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'A': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.7719/DEL/2019  
[Assessment Year: 2007-08]**

|                                                                                                               |    |                                                                |
|---------------------------------------------------------------------------------------------------------------|----|----------------------------------------------------------------|
| Ansal Properties & Infrastructure Ltd.<br>115, Ansal Bhawan, 16,<br>Kasturba Gandhi Marg,<br>New Delhi-110001 | Vs | Asst. Commissioner of Income Tax,<br>Circle-2(2),<br>New Delhi |
| <b>PAN-AAACA0006D</b>                                                                                         |    |                                                                |
| Assessee                                                                                                      |    | Revenue                                                        |

|             |                                                    |
|-------------|----------------------------------------------------|
| Assessee by | Sh. RS Singhvi, Adv. &<br>Sh. Satyajeet Goel, Adv. |
| Revenue by  | Sh. P. Praveen Sidharth, CIT-DR                    |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>23.03.2023</b> |
| <b>Date of Pronouncement</b> | <b>05.04.2023</b> |

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-I, New Delhi, dated 16.07.2019 and pertains to Assessment Year 2007-08.

2. The grounds of appeal reads as under:-

1. That on facts and circumstances of the case and in law, Commissioner of Income Tax (Appeals)-I, New Delhi [the CIT(A)] has erred in upholding levy of penalty of Rs.2,30,58,990/- under section 271(1)(c) of Income tax Act, 1961 ('the Act').

2. That on facts and circumstances of the case and in law, the CIT(A) has erred in upholding the levy of penalty u/s 271(1)(c), even though the show cause notice u/s 274 of the Act did not specify whether the penalty is sought to be levied on the charge of "concealment of income" or "furnishing of inaccurate particulars of income".

3. That on facts and circumstances of the case and in law, the CIT(A) has erred in holding that the Appellant has furnished inaccurate particulars of income to the extent of Rs.6,78,40,520/-

(6,75,20,806 + 3,91,714) and as such, it is liable to penalty u/s 271(1)(c) of the Act.

4. That on facts and circumstances of the case and in law, the CIT(A) did not appreciate that deduction of expenditure on Qualified Institutional Placement (QIP) was claimed in the statement / computation of income as line item with detailed note giving complete details of the claim. Merely because QIP expenses to the extent of Rs.6,75,20,806/- were disallowed, it cannot be said that the Appellant has furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Act.

4.1. That on facts and circumstances of the case and in law, the CIT(A) upholding penalty u/s 271(1)(c) in respect of QIP expenses did not appreciate the distinction between a "false" and a "wrong" claim.

5. That on facts and circumstances of the case and in law, the CIT(A) has erred in holding that even in respect of deduction claimed u/s 80-IB(10) of the Act of Rs.68,29,057/-, the Appellant has furnished inaccurate particulars of income to the extent of Rs.3,91,714/-.

5.1 That on facts and circumstances of the case and in law, the CIT(A) did not appreciate that on account of smallness of amount, the Appellant did not dispute the disallowance made u/s 80-IB(10), inasmuch as, out of disallowance of Rs.68,29,057 / - relief of Rs.65,09,343/- was allowed by the CIT(A). In the circumstances, it cannot be said that the Appellant has furnished inaccurate particulars of income to the extent of Rs.3,91,714/- (68,29,057 - 65,09,343).

6. That on facts and circumstances of the case and in law, the CIT(A) did not appreciate that the Appellant has discharged the onus that lay upon it in terms of Explanation 1 to section 271(1)(c) of the Act".

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

"In the present case, the AO has passed the penalty order under section 271(1)(c) imposing penalty of Rs.2,30,58,990/- for AY 2007-08. In the assessment order the total income was computed at Rs. 189,91,98,857/-, against the declared income of Rs.170,55,22,175/-. In the assessment order, the AO has made the following additions: (i) addition of prior period expenses of Rs. 18,76,873/-, (ii) disallowance of deduction of QIP expenses of Rs. 14,79,69,000/-, (iii) deduction U/s 80IB(10) was disallowed to the extent of Rs.68,29,057/-, (iv) addition of notional ALV of Rs.2,21,21,466/- u/s 22 & (v) disallowance of completed project expenses of Rs.1,48,80,286/-. In the first appeal, the Ld. CIT(A) vide order dated 30.09.2010, deleted the addition of

notional ALV and disallowance of completed project expenses. Out of disallowance of deduction of Rs.68,29,057/- under section 80IB(10) of the Act, relief of Rs.65,09,343/- was allowed. Thus the disallowance of deduction u/s 80IB(10) was restricted to Rs.3,19,714/-. Similarly, out of disallowance of Rs. 14,79,69,000/-, being the expenditure on Qualified Institutional Placement (QIP), relief of Rs.2,03,69,000/- was allowed. by the Ld. CIT(A) and disallowance was restricted to Rs. 12.76 Cr. In second appeal, Hon'ble ITAT vide order dated 17.8.2017 reduced the disallowance on account of QIP expenses to Rs.6,75,20,806/-. Insofar as disallowance of completed project expenses of Rs. 1,48,80,286/- and deduction under section 80IB(10) is concerned, the relief allowed by Ld. CIT(A) has been upheld. Addition of notional ALV of Rs.2,21,21,466/- was set-aside to the CIT(A) to decide the issue on factual matrix of respective properties. The position of disallowances / additions after disposal of appeal by Hon'ble ITAT is as under: (i) disallowance of QIP expenses was reduced to Rs.6,75,20,806/- & (ii) deduction under section 80IB(10) was restricted to Rs.3, 19,714/-."

4. On the aforesaid addition, penalty of Rs.2,30,58,990/- was imposed, which was confirmed by the Ld. CIT(A).

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

6. We have heard both the parties and perused the records. The Ld. Counsel for the assessee summarized in brief his pleadings, which reads as under:-

"Dispute – Penalty imposed u/s 271(1)© amounting to Rs.2,30,58,990/- in respect of following disallowance.

|                                                                                              |                  |
|----------------------------------------------------------------------------------------------|------------------|
| Disallowance of expenditure in connection with QIP                                           | Rs.6,75,20,806/- |
| Disallowance of claim of deduction u/s 80IB on the ground of allocation of interest expenses | Rs.3,19,714/-    |
| Total                                                                                        | Rs.6,78,40,520/- |

The assessment was made u/s 143(3) of the Income tax Act, 1961. The assessee has returned income of Rs. 170 crores.

**QUANTUM PROCEEDINGS-**

1. With regard to QIP (Qualified Institutional Placement scheme) expense
  - The assessing officer initially made disallowance of QIP expenses to the tune of Rs. 14.79 crores on the ground of same being of capital nature. [Asst order Page 5-9, Conclusion at Page 9 Para 4.5]
  - The CIT(A) restricted the disallowance to Rs.12.76 crores by reducing expenses in connection with un-materialized scheme. [CIT(A) Order Page 1 to 10, Finding - Pg 8 Para 10 onwards]
  - The ITAT further restricted the disallowance to Rs. 6,75,20,806/- by reducing additional expenses not connected with issue of QIP. [ITAT Order Page 6 to 26, Finding Pg 17-26 Para 11-221]
2. With regard to reduction in claim of deduction u/s 80-IB
  - The assessing officer initially made disallowance of claim of deduction u/s 80IB to the extent of Rs. 68,29,057/- by allocating head office expenses the ration of turnover. [Asst Order Pg 14]
  - The CIT(A) reduced the disallowance to the extent of Rs. 3,19,714/- on the ground that assessee has interest free funds available and only a proportionate of borrowed funds could be attributable to eligible units. [CIT(A) Order Page 12-14 Para 12, Conclusion page 13]
  - The revenue preferred appeal before ITAT and the same was dismissed. The assessee did not filed appeal before CIT(A) [ITAT Page 26 - 34, Para 23-30]

**Date of assessment order: 08/12/2009**

**Date of CIT(A) order : 30/09/2010**

**Date of ITAT order : 17/08/2017**

**SUBMISSIONS**

1. Ground No.2 is regarding non-striking off of irrelevant part in the notice u/s 274 rws 271(1)(c). The assessing officer has failed to record proper satisfaction in the notice us 274 dated 08/12/2009
  - Pr.CIT v. Sahara India Life Insurance Co. Ltd. [2021] 432 IT 84 (Delhi)
  - CIT v. SSA's Emerald Meadows [2016] 242 Taxman 180 (SC)
  - CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 IT 565 (Kar)

- Orient Clothing Company P. Ltd. v. ACIT (ITAT Delhi) (ITA No. 8931/D/19) (05/01/23) (NK Choudhry and Shamim)
2. Primary dispute is with regard to nature of expenses i.e. revenue v. capital. The genuineness of expenses is not in dispute. There is complete disclosure of facts in the balance sheet and IT and as such the allegation of furnishing of inaccurate particulars of income is arbitrary. There is no dispute with regard to correctness of expenditure but the disallowance is merely on the ground of admissibility and same being of capital nature
- CIT v HMA Udyog P. Ltd. [2007] 211 CTR 543 (Del.)
  - Aanya Real Estate P. Ltd. vs DCIT (ITA No.115/Mum/20) (ITAT Mum)
  - Reliance Petro Products [2010] 322 ITR 158 (SC)
3. Further, the issue is debatable as the claim of the assessee is that the proceeds from QIP has been utilized towards working capital and hence the expenses in connection with are of the revenue nature. The details of utilization of QIP is as under:-

| <b>Nature of Expenses</b>                        | <b>Amount<br/>(Rs. In Lacs)</b> |
|--------------------------------------------------|---------------------------------|
| Acquisition of land (stock)                      | 22,396                          |
| Construction and development in various projects | 10,859                          |
| Repayment of borrowings                          | 10,808                          |
| Working capital purposes                         | 8,208                           |
| QIP issue expenses                               | 1,804                           |
| Fixed Deposits with banks                        | 14,000                          |
| Investment in mutual Fund                        | 100                             |
| <b>Total</b>                                     | <b>68,175</b>                   |

Reference is made to the latest decision of Delhi ITAT in the case of ACIT v. PC Jewellers Ltd. [2022] 93 ITR (T) 244 (Delhi ITAT) where in it was held that expenses in connection with issuance of share capital which was ultimately utilized for the working capital purposes are to be allowed as revenue expenses.

As the issue is debatable and not free from doubt, there could be no case of penalty u/s 271(1)(c)."

7. Per Contra, the Ld. DR relied upon the orders of the authorities below.

8. Upon careful consideration, first we address the assessee's claim regarding jurisdictional defect in as much as in ground no.2, the assessee has stated that there is no striking off of irrelevant part in the notice u/s 274 rws 271(1)(c). Copy of the notice 274 is attached in paper book at page 2. It is evident that the same is an omnibus notice without identifying the charge by striking off of the limb which is not applicable. In such circumstances, the penalty levied cannot be sustained. For this proposition, we rely upon the full bench decision of Hon'ble Bombay High Court in the case of Md. Farhan A. Shaikh vs DCIT 125 taxmann.com 253 (Bom). Similar proposition was laid down in Pr. CIT vs Shara India Life Insurance Co. Ltd. [2021] 432 ITR 84 (Del.) Thus, since the penalty notice is omnibus and the charge has not been specified, the penalty is not sustainable.

9. Apart from the above, it is noted that the issue on which penalty has been finally levied is disallowance of expenditure in connection with QIP and disallowance of claim of deduction u/s 80-IB on the ground of allocation of interest expenses. It cannot be said that there is concealment of income or furnishing of inaccurate particulars of income on the issue on which the penalty has been levied. All due disclosures are there. Primary dispute is with respect of nature of expenses i.e. revenue vs capital. These particulars have been completely disclosed in Income Tax Return. Hence if the claim is not accepted merely on the ground of the same being classified capital by Revenue authorities, in such as a situation the case of Reliance Petro products (2010) 322 ITR 158 (SC) comes to the rescue of the assessee. In this case it was held that mere disallowance of a claim which

is not ex-facie bogus cannot lead to levy of penalty. In these circumstances, in our considered opinion, the assessee deserves to succeed and the penalty levied is hereby deleted.

10. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 05<sup>th</sup> April, 2023.

**Sd/-**  
**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

**Sd/-/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 05.04.2023.

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi