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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 24.07.2023*

\+ **ITA 393/2023**

PR. COMMISSIONER OF INCOME TAX-1 ..... Appellant

Through: Mr Sanjay Kumar, Senior Standing Counsel with Ms Easha Kadian and Ms Hemlata Rawat, Standing Counsel.

versus

M/S ANSAL PROPERTIES AND INFRASTRUCTURE LIMITED ..... Respondent

Through: Mr Tapas Ram Misra, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.37018/2023*[Application filed on behalf of the appellant/revenue seeking condonation of delay of 320 days in re-filing the appeal]*

1. This is an application moved on behalf of the appellant/revenue, seeking condonation of delay in re-filing the appeal.

2. According to the appellant/revenue, the delay involved is 320 days.

3. Mr Tapas Ram Misra, who appears on behalf of the respondent/assessee, says that he has no objection to the prayer made in the application being allowed.

4. It is ordered accordingly. The delay is condoned.

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5. The application is disposed of in the aforesaid terms.

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6. This appeal concerns Assessment Year (AY) 2011-12.

7. The appellant/revenue has challenged the order dated 22.02.2022 passed by the Income Tax Appellate Tribunal [in short, "Act"].

8. Before the Tribunal, the appellant/revenue had assailed the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 16.05.2017.

8.1 The appellant/revenue appealed to the Tribunal against the aforementioned order of the CIT(A), whereby penalty amounting to Rs.1,71,40,000/-, imposed by the Assessing Officer (AO), under Section 271(1)(c) of the Income Tax Act, 1961 [in short, "Act"] was deleted. [See page 21 of the case file].

9. Before we proceed further, the following broad facts are required to be noticed:

10. The respondent/assessee filed the Return of Income (ROI) on 30.09.2011. In the ROI, the respondent/assessee had declared its income amounting to Rs.1,20,19,74,162/-.

10.1. It appears that the respondent/assessee had filed a revised return, whereby, the total taxable income was pegged at Rs.1,19,91,36,679/-.

10.2 Evidently, the respondent/assessee was subjected to scrutiny assessment. Pursuant to the assessment, the respondent/assessee's income was assessed at Rs.1,25,87,20,383/-.

10.3 Significantly, two additions were made to the revised ROI of the respondent/assessee:

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(i) First, with regard to the Annual Letting Value (ALV) of the vacant commercial/self-occupied assets. In this behalf, the addition was crystallized at Rs.5,90,67,704/-.

(ii) Second, on account of the disallowance of amortized cost of land concerning wind power projects. In this behalf, the addition was quantified at Rs.5,16,000/-.

11. To be noted, these additions were challenged by the respondent/assessee before CIT(A). CIT(A) *vide* order dated 27.11.2014 directed deletion of addition made on account of disallowance of amortized cost of land concerning wind power projects.

11.1 Insofar as the addition on account of the ALV of vacant commercial/self-occupied assets is concerned, the CIT(A) upheld the addition.

12. On account of this, penalty proceedings were separately initiated against the respondent/assessee.

12.1 The notice which was issued to the respondent/assessee did not specify, as to whether penalty proceedings was being initiated on account of furnishing inaccurate particulars of income or concealing particulars of income.

13. That said, the penalty order was passed by the AO on 28.03.2016. As indicated above, penalty amounting to Rs.1,71,40,000/- was imposed on the respondent/assessee via the aforementioned order.

14. This led the respondent/assessee to approach CIT(A), once again, by preferring an appeal against the order levying penalty.

15. Before CIT(A), it was contended that the CIT(A), in the years

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preceding the AY in issue, had deleted the addition on account of the ALV, which was also confirmed by the Tribunal.

15.1 It was the assertion of the respondent/assessee before the CIT(A) that the reversal of this trend only occurred after this court rendered a judgment on 31.10.2012 in the matter of ***CIT vs. Ansal Housing Finance & Leasing Co. Ltd.*** [2013] 354 ITR 180 (Del.).

15.2 In other words, the argument was that since it was a debatable issue, and, hence, the plausible view, penalty could not have been levied under Section 271(1)(c) of the Act.

16. Furthermore, it was also contended that the penalty notice did not indicate which of the two limbs provided under Section 271(1)(c) of the Act was triggered *qua* the respondent/assessee i.e., as to whether the respondent/assessee had concealed particulars of income or furnished inaccurate particulars of income.

17. CIT(A) agreed with the respondent/assessee qua both counts: Firstly, at a relevant point in time, the issue under consideration was debatable and a plausible view had been taken. Secondly, the charge levelled against the respondent/assessee for triggering penalty proceedings was not clear.

17.1 Thus, the CIT(A) concluded that penalty ought not to be imposed on the respondent/assessee. It was against this order that the appellant/revenue preferred an appeal to the Tribunal.

18. The Tribunal sustained the view taken by the CIT(A). This is evident upon perusal of paragraph 12 to 16 of the impugned order passed by the Tribunal.

19. Mr Sanjay Kumar, learned senior standing counsel, who appears on

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behalf of the appellant/revenue, submitted that the view taken, both by the CIT(A) and the Tribunal, was flawed.

19.1 In support of his submission, Mr Kumar relied upon the penalty order passed by the AO.

20. On the other hand, Mr Tapas Ram Misra, who appears on behalf of the respondent/assessee, relied upon the order passed by CIT(A).

21. We have heard counsel for the parties and perused the record. According to us, on both counts, the CIT(A) and the Tribunal were right.

22. It is not in dispute that the penalty notice did not indicate, clearly, as to which limb of Section 271(1)(c) of the Act was trigged for initiation of penalty proceedings against the respondent/assessee.

22.1 It is possible, in a given case, that both limbs are attracted; however, even that aspect was not made clear in the notice issued by the AO under Section 271(1)(c) of the Act. [See ***Pr Commissioner of Income Tax-3 v Ms. Minu Bakshi*** 2022: DHC: 2814-DB].

23. We are also aligned to the view that the issue involved was debatable at the relevant point in time, which took a different turn only when this court delivered its judgment in ***Ansal Housing Finance & Leasing Co. Ltd.***

24. Thus, having regard to the foregoing reasons, no interference is called for with the impugned order.

25. The appeal is, accordingly, dismissed, as no substantial question of law arises for our consideration.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 24, 2023/pmc

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