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

+ **ITA Nos. 398/2017, 399/2017**

Date of decision: 19th December, 2018

GRANITE GATE PROPERTIES PVT. LTD. Appellant

Through: Mr. Ajay Vohra, Sr.Adv. with Mr.
Gaurav Jain and Mr. Aniket D.
Agrawal, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX..... Respondent

Through: Mr. Ruchir Bhatia, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL)

CM APPL. No. 52227/2018 in ITA No.398/2017 *(for placing on record additional documents)*

Learned counsel for the respondent-Revenue does not oppose this application for taking additional documents on record.

Following additional documents relating to the assessment year 2012-13 are taken on record-:

(i) Copy of acknowledgment of income-tax returns filed for assessment year 2013.

(ii) Copy of computation of income accompanying the income-tax return for assessment year 2012-2013.

(iii) Copy of audited financial statement for financial year ending 31.03.2012.

(iv) Copies of assessment and rectification orders dated 23.01.2017 and 25.01.2018 for assessment year 2012-13.

(v) Copy of Reconciliation of Figures for assessment year 2010-11 and 2012-13.

Application is allowed with clarification that the legal effect has not been commented upon and is left open to be decided in the main appeal.

ITA No.398/2017 and ITA No.399/2017

Above-captioned appeals under Section 260A of the Income Tax Act, 1961 ('Act', for short) by M/s Granite Gate Properties Pvt. Ltd. ('appellant-assessee', for short) arise from common order dated 16.12.2016 passed by the Income Tax Appellate Tribunal ('Tribunal' for short) accepting the appeals preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals) ['CIT (Appeals) for short] deleting penalty and upholding the orders of the Assessing Officer imposing penalty for concealment of income under Section 271(1)(c) of the Act. The appeals pertain to the assessment years 2010-11 and 2011-12.

2. The appeals were admitted for hearing vide order of this Court dated 24.01.2018 by framing the following substantial question of law.

"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the penalty under Section 271(1)(c) of the Income Tax Act, 1961 was leviable in the circumstances of the case, when the assessee asserted that it had commenced business at the relevant time?"

3. Hearing in the appeals has been expedited as the appellant-assessee had filed applications for stay of recovery of outstanding penalty by coercive steps, prosecution etc. in which interim orders have been passed. While admitting the appeals vide order dated 24.01.2018 liberty was granted to the Revenue to file criminal complaint under Section 276C of the Act but with stipulation not to proceed by taking further steps. The appellant-assessee on the prayer for stay of demand was required to first approach the Assessing Officer to explain difficulties in the context of business operations. By subsequent order dated 02.04.2018, Revenue was directed to maintain status quo with respect to filing of complaint against the directors. Interim applications were disposed of vide order dated 20.4.2018 with directions that Revenue shall not take coercive steps to enforce the penalty demand attributable to the subject matter of the appeals.

4. The facts which are required to be noticed in the present appeals are rather short and brief.

4.1. The appellant-assessee is a company engaged in real-estate development.

4.2. Appellant-assessee had commenced construction of two housing projects Lotus Boulevard and Lotus Panache in Noida, during the period relevant to the assessment years 2010-11 and 2011-12, respectively.

4.3. The appellant-assessee was following and recognizing revenue from the projects based upon the Percentage of Completion Method of accounting ('PoC Method' for short). PoC Method was recognized under the Accounting Standards 2002 prescribed and applicable namely, Accounting Standard – 7 ('AS-7' for short).

4.4. Appellant-assessee in the returns of income for the assessment years 2010-11 and 2011-12 had declared loss of Rs.10,98,42,458/- and Rs.21,22,38,055/- respectively.

4.5. Appellant-assessee had not recognized revenue from the Lotus Boulevard and Lotus Panache projects till construction and development had crossed threshold of 30%. Till then the construction and development costs incurred was booked under the head 'capital work in progress'.

4.6. Threshold of 30% of development for the Lotus Boulevard project was crossed during the financial year relevant to the Assessment Year 2010-11 and accordingly proportionate cost and revenue therefrom was booked in the profit and loss account for the return for the said year and further years and offered to tax.

4.7. Threshold of 30% of development for the Lotus Panache project was crossed in the period relevant to the assessment year 2011-12 and accordingly proportionate cost and revenue therefrom was booked in the profit and loss account for the return for the said year and further years and offered to tax.

4.8. 'Indirect' expenses in the nature of selling, administrative and another expenses, commission and finance cost in respect of Lotus Boulevard and Lotus Panache projects were treated and shown by the appellant-assessee as deductible in the returns for the assessment years 2010-11 and 2011-12, respectively.

5. Returns for the assessment years 2010-11 and 2011-12 were taken up for scrutiny assessment. Plea and contention of the appellant-assessee that they under the PoC Method had rightly not accounted for the revenue in

respect of Lotus Boulevard project for the assessment year 2010-11 and Lotus Panache project for the assessment year 2011-12 as the projects had not crossed the threshold of 30 per cent which was accepted by the Assessing Officer in principle and on facts.

6. The Assessing Officer observed and held that the appellant-assessee had erroneously and wrongly booked 'indirect' project expenses relating two projects in the two years, while the revenue earned from the Lotus Boulevard project was proportionately booked in in the assessment year 2011-12 and revenue from Lotus Panache project was proportionately booked in the assessment year 2012-13. 'Indirect' costs like cost of construction and development for the Lotus Boulevard project for the assessment year 2010-11 and Lotus Panache project for the assessment year 2011-12 should be booked and treated as 'capital work in progress'. For this reason, addition of Rs.11,03,88,382/- and Rs.21,28,05,101/- was made in the returned income for the assessment years 2010-11 and 2011-12, respectively. Consequent to the disallowance, the assessed income for the assessment years 2010-11 and 2011-12 was computed at Rs.3,55,933/- and Rs.5,67,046/, respectively.

7. The appellant-assessee did not appeal and the assessment orders have attained finality.

8. As noticed above, the issue raised in the present appeal relates to imposition of penalty under Section 271(1)(c) of the Act on account of the said additions. The Tribunal in the impugned order has reversed the findings recorded by the CIT (Appeals) and affirmed the order of the Assessing Officer imposing penalty under clause (c) to sub-section (1) of section 271 of the Act for the following reasons:-

“(D) We have heard both sides carefully. We have also considered the written submissions filed by Ld. CIT (DR), the synopsis filed by the assessee and the rejoinder filed by the assessee to the written submissions of the Ld. CIT (DR). We have also considered all the methods on record. The allowability of expenses claimed by the assessee is presently not the issue in dispute before us, as the assessee has accepted the assessment orders for both Assessment Years 2010-11 and 2011-12, and has not filed any appeal against these assessment orders. In fact the assessee even revised the return of income for 2011-12 on the basis of assessment order for Assessment Year 2010-11, as the assessee accepted the disallowance of expenses made by the AO in assessment order for Assessment Year 2010-11. In the present appeals before us, the issue before us is not, whether the disallowance of expenses by the AO in the assessment order was as per law or not. That issue is settled and presently not in dispute; because the assessee has accepted the assessment orders for both Assessment Years 2010-11 and 2011-12. The issue before us is whether it is a fit case for levy of penalty u/s 271(1)(c) of IT Act for assessment years 2010-11 and 2011-12. We find it pertinent that the claim for expenses made by the assessee was inconsistent with the Guidance Notes 2006, issued by ICAI; which was applicable at the relevant time when the assessee filed the returns of income. Therefore, it cannot be said that the assessee's claim for expenses was bonafide. The explanation offered by the assessee is that the claim of expenses is in accordance with Guidance Notes 2012 of ICAI. This explanation, however, is not bona fide because at the relevant time when returns were filed by the assessee, Guidance notes 2012 had not been issued by ICAI, and instead, Guidance Notes issued by ICAI in 2006 were applicable. Therefore, the assessee is clearly hit by Explanation 1(B) to section 271(1)(c) of IT Act. We also take guidance from the order of Hon'ble Supreme Court of India in MAK Date (P.) Ltd. V. Commissioner of Income-tax-II (2013) 38 taxmann.com 448 (SC). In this case the Hon'ble Apex Court upheld the levy of penalty u/s 271(1)(c) of I.T. Act despite offer of surrender of income made by the assessee with a view to avoid litigation and buy peace and to

make an amicable settlement of the dispute. Hon'ble Supreme Court held that voluntary disclosure does not release the assessee from the mischief of penal proceedings, and that the law does not provide that **when an assessee makes voluntary disclosure of his income he had to be absolved** from penalty. We are also guided by the order of Hon'ble Jurisdictional High Court in the case of CIT vs. HCIL Kalindee Arsspl (2013) 37 taxmann.com 347 (Delhi). In this case Hon'ble Delhi High Court held that merely because assessee complied with statutory procedural requirement of filing prescribed form and certificate of Chartered Accountant it could not absolve the assessee of its liability, if act or attempt in claiming deduction was not bona fide; and upheld the imposition of penalty under Section 271(1)(C). We are also guided by the order of Hon'ble Jurisdictional High Court in the case of CIT vs. NG Technologies Ltd. (2015) taxman.com 389 (Delhi). In this case Hon'ble Delhi High Court upheld the levy of penalty u/s 271(1)(c) of I.T. Act in view of the fact that the assessee did not file revised return voluntarily but had filed revised return after AO confronted the assessee and assessee was asked to explain claim of loss. Moreover, we are also guided by the judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. Zoom Communication (P.) Ltd. (2010) 327 ITR 510 (Delhi), relevant portion of which is reproduced as under:

"It is true that mere submitting a claim which is incorrect, in law, would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bona fide. If the claim besides being incorrect, in law, is mala fide the Explanation 1 to section 271 (1) would come into play and work to the disadvantage of the assessee. [Para 19]

The Court cannot overlook the fact that only a small percentage of the income-tax returns are picked up for scrutiny. If the assessee makes a claim which is not only incorrect in law, but is also wholly without any basis and the explanation furnished by him for making such a

claim is not found to be bona fide, it would be difficult to say that he would still not be liable to penalty under section 271 (1)(c). If one takes the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bona fide while making a claim of this nature, that would give a licence to the unscrupulous assesseees to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return 'would not be picked up for scrutiny and they would be assessed on the basis of self-assessment under section 143(1) and even if their case is selected for scrutiny, they can get away merely by paying the tax, which, in any case, was payable by them. The consequence would be that the persons, who make claims of this nature, actuated by a mala fide intention to evade tax otherwise payable by them, would get away without paying the tax legally payable by them,' if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have. "(Para 20)" .

Thereafter, the impugned order makes reference to several judgments of the Supreme Court and the Delhi High Court, to hold that imposition of penalty under section 271(1) (c) of the Act was justified.

9. We begin by reproducing relevant portion of Section 271(1)(c) and Explanation 1 to the said sub-section, which read as under:

"Failure to furnish returns, comply with notices, concealment of income, etc.

271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(a)xxx

(b)xxx

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

(d)xxx

(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.

Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

The findings of the Tribunal rejecting explanation of the appellant-assessee with reference to clause (B) to Explanation 1 to Section 271(1) (c) can be divided into two parts or reasons. The Tribunal in the above quotation has referred to disallowance of expenses by the Assessing Officer, which was settled beyond doubt and debate for the appellant-assessee had accepted the additions made in the assessment orders. Mere surrender and voluntary

disclosure by an appellant-assessee cannot be a ground to delete penalty for concealment. Secondly, the amount i.e. 'indirect' expenses could not have been claimed as expense under AS-7 as it was inconsistent with the Guidance Note, 2006 which was applicable when the returns were filed. Reference made to Guidance Note, 2012 was considered irrelevant as they were not applicable at the relevant time when the returns of income were filed. Sham and bogus claim reducing the tax liability would be lame excuse and not a bona-fide explanation. Certificate of the Chartered Accountant in compliance with the statutory requirements would not absolve the assessee from the penalty if the act or attempt in claiming the deduction was not *bona fide*. An explanation even on a legal claim when without any basis and foundation should be rejected as this would give a license to unscrupulous assesseees to make wholly untenable and unsustainable claims in the hope that the return would not be taken for scrutiny assessment. The dictum as expounded is correct. The issue relates to application of the principles to the case in hand. An assessee to escape penalty for concealment as per clause (B) to Explanation 1 must establish its *bona fides* in making the rejected and disallowed claim. In addition, the assessee must establish that all facts and material for computation of the total income were duly disclosed.

10. In the present case appellant- assessee had given an explanation justifying the claim for 'indirect' expenses though it had not accounted for the revenue from the two projects. The explanation was rejected during the course of the assessment proceedings and accordingly addition in the form of disallowance of the 'indirect' expenditure was made. Disallowance made having attained finality is not to be directly examined and decided in these appeals, albeit the nature and quality of the explanation offered can be

examined to consider and decide *bona fides* of the assessee in making the claim. Assessment proceedings which relate to computation of taxable income are in this manner different and distinct from penalty proceedings.

11. On the question of accounting standards, our attention was drawn to paragraphs 24 and 25 of AS-7, 2002 that relate to accounting under the PoC Method and read as under:-

“24. The recognition of revenue and expenses by reference to the stage of completion of a contract is often referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed. This method provides useful information on the extent of contract activity and performance during a period.

25. Under the percentage of completion method, contract revenue is recognised as revenue in the statement of profit and loss in the accounting periods in which the work is performed. Contract costs are usually recognized as an expense in the statement of profit and loss in the accounting periods in which the work to which they relate is performed. However, any expected excess of total contract costs over total contract revenue for the contract is recognised as an expense immediately in accordance with paragraph 35”.

12. Our attention was also drawn to paragraphs 15, 16 and 19 of AS-7, 2002 which we may observe possibly relate to construction contracts. Nevertheless, we would like to reproduce the same:-

“

15. Contract costs should comprise:

(a) costs that relate directly to the specific contract;

(b) costs that are attributable to contract activity in general and can be attributed to the contract; and

(c) such other costs as are specifically chargeable to the customer under the terms of the contract

16. Costs that relate directly to a specific contract include:

- (a) site labour costs, including site supervision;*
- (b) costs of materials used in construction;*
- (c) depreciation of plant and equipment used on the contract;*
- (d) costs of moving plant, equipment and materials to and from the contract site;*
- (e) costs of hiring plant and equipment;*
- (f) costs of design and technical assistance that is directly related to the contract;*
- (g) the estimated costs of rectification and guarantee work, including expected warranty costs; and*
- (h) claims from third parties.*

These costs may be reduced by any incidental income that is not included in contract revenue, for example income from the sale of surplus materials and the disposal of plant and equipment at the end of the contract.

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19. Costs that cannot be attributed to contract activity or cannot be allocated to a contract are excluded from the costs of a construction contract. Such costs include:

- (a) general administration costs for which reimbursement is not specified in the contract;*
- (b) selling costs;*
- (c) research and development costs for which reimbursement is not specified in the contract; and*
- (d) depreciation of idle plant and equipment that is not used on a particular contract”.*

13. The Guidance Note, 2006 applicable to AS-7, 2002 had explained:

“3. The real estate sales take place in a variety of ways and may be subject to different terms and conditions as specified in the agreement for sale. Accordingly, the point of time at which all significant risks and rewards of ownership can be considered as transferred, is required to be determined on the basis of the terms and conditions of the agreement for sale. In case of real estate sales, the events, such as, transfer of legal title to the buyer or giving possession of real

estate to the buyer under an agreement for sale, usually, provide an evidence to the effect that all significant risks and rewards of ownership have been transferred to the buyer. It may, however, be noted that in case of real estate sales, the seller usually enters into an agreement for sale with the buyer at initial stages of construction. This agreement for sale is also considered to have the effect of transferring all significant risks and rewards of ownership to the buyer provided the agreement is legally enforceable and subject to the satisfaction of all the following conditions which signify transferring of significant risks and rewards even though the legal title is not transferred or the possession of the real estate is not given to the buyer:

(a) The significant risks related to the real estate have been transferred to the buyer; in case of real estate sales, price risk is generally considered to be one of the most significant risks.

(b) The buyer has a legal right to sell or transfer his interest in the property, without any condition or subject to only such conditions which do not materially affect his right to benefits in the property.

4. Once the seller has transferred all the significant risks and rewards of ownership to the buyer and other conditions for recognition of revenue specified in paragraphs 10 and 11 of AS 9 are satisfied, any further acts on the real estate performed by the seller are, in substance, performed on behalf of the buyer in the manner similar to a contractor. Accordingly, in case the seller is obliged to perform any substantial acts after the transfer of all significant risks and rewards of ownership, revenue is recognised by applying the percentage of completion method in the manner explained in AS 7, Construction Contracts.

xxx

8. When the seller has transferred to the buyer all significant risks and rewards of ownership, it would be appropriate to recognize revenue at that stage subject to fulfillment of other conditions specified in paragraph 6 above, provided the seller has no further substantial acts to complete under the contract. However, in case the seller is obliged to perform any substantial acts after the transfer of all significant risks and rewards of ownership, revenue should be recognised on proportionate basis as the acts are performed, i.e., by applying the percentage of completion method in the manner

explained. Accounting Standard (AS) 7, Construction Contracts. An example is a building or other facility on which construction has not been completed though all significant risks and rewards of ownership have been transferred pursuant to the fulfillment of conditions stated in paragraph 7 above. Another example is of a land which is yet to be developed though the seller has transferred all significant risks and rewards of ownership of the land to the buyer through an agreement for sale as per paragraph 7 above”.

It is accepted and admitted position that the expenses were claimed under the head ‘selling administrative and other expenses commission/finance cost’. In case of construction contracts, difference is made between direct and indirect costs. Question would arise whether such difference should be accepted in the case of a real-estate developer. At times Assessing Officer reject claims on the ground of prior period expenditure. In hindsight the claim made by the appellant-assessee may not look as justified, but we would not reject the plea of lack of *bona fides* for this reason alone without reference to other factors including the disclosures made.

14. We would like to reproduce the chart filed by the appellant-assessee, which reflects the effect the additions/disallowance made by the Assessing Officer in the two assessment years. The chart reads :-

Granite Gate Properties Pvt. Ltd.
Reconciliation of Figures for Assessment Years 2010-11 to 2012-13

Particulars	Amount (Rs.) 31. 03. 2010	Amount (Rs.) 31. 03. 2011	Amount (Rs.) 31. 03. 2012

<u>Work - in - Progress</u>			
Opening	2, 783, 558, 635	8, 397, 460, 948	10, 657, 107, 800
Add: Increase during the year	5,613,902,313	5,971,048, 237	
Less: Cost debited to Profit & Loss Account		3,711,401,385	
Closing	8, 397, 460, 948	10, 657, 107, 800	8, 708, 244, 129
<u>Turnover</u>			
Sales Recognition as per POCM methodology	Nil*	421,86,32,539**	1569,16,96,338***
Cost of Construction/development debited to the Profit & Loss Account	Nil*	371,14,01,385**	1080,12,89,033***
Profit / Loss as per Profit & Loss Account	-111,760,441	-105,131,672	810,427,235
Profit / Loss as per normal provisions	- 109, 842, 458	- 101, 849, 703	833, 944, 214
<u>Less: Indirect Project Expenses disallowed during AY 2010-11/AY 2011-12, claimed in the ITR for subsequent years. i.e., AY 2011-12/AY 2012-13 and allowed in the assessment order for the respective years</u>		-110,388,382	-212,805,101
Returned Income/Loss	- 109, 842, 458	- 212, 238, 085	621, 139, 113
<u>Add: Disallowance made by AO on account of indirect project expenses</u>			NA
Selling, Administrative & Other expenses	109,924,787	28,578,534	NA
Commission/Finance Cost	2,543,099	184,226,567	NA
<u>Less: Suo moto disallowance by Assessee in ITR</u>	2,079,504	-	NA
Transfer Pricing Adjustment	NA	NA	85,158,538
Total Disallowance by AO in assessment order	110, 388, 382	212, 805, 101	85, 158, 538
Assessed Income	355, 933	567, 040	706, 297, 648

* During the financial year relevant to assessment year 2010 - 11, construction of the project named "**Lotus Boulevard**" was yet to cross the threshold of 30% as per POCM, and therefore, no revenue therefrom was recognised, and the cost of construction/development was booked under 'Capital Work-in-Progress'.

** During the financial year relevant to assessment year 2011 - 12, project named "**Lotus Boulevard**" crossed the stage of 30% development as per POCM, and therefore, proportionate cost and revenue therefrom was booked in the Profit and Loss account for the financial year 2010-11 and offered to tax.

As regards the project "**Lotus Panache**", during the financial year relevant to assessment year 2010-11 (sic.2011-12), construction of the project was commenced and did not cross the threshold of 30% as per POCM, and therefore, no revenue therefrom was recognised, and the cost of construction/ development was booked under 'Capital Work-in-Progress'.

*** During the financial year relevant to assessment year 2012 - 13, both projects, namely, "**Lotus Boulevard**" and "**Lotus Panache**" crossed the stage of 30% development as per POCM, and therefore, proportionate cost and revenue therefrom was booked in the Profit and Loss account for the financial year 2011-12 and offered to tax.

Disallowance made in the assessment year 2010-11 in respect of Lotus Boulevard project was allowed in the next assessment year 2011-12. Similarly, the disallowance made in the assessment year 2011-12 in the case of Lotus Panache project was allowed in the assessment year 2012-13. Factually this position is accepted. Thus, the issue was relating to the year of allowability in view of the accounting method applied, as the Revenue does not dispute that the quantum and the nature of expenditure, and would qualify in the relevant year for deduction under Section 37 of the Act.

15. The appellant-assessee has pointed out with merit that the tax effect in the present cases was minimal as taxable income as assessed even after the additions/disallowance were Rs.3,55,933/- and Rs.5,67,040/- for the assessment year 2010-11 and 2011-12, respectively. According to the assessee, they did not deem it appropriate to file appeals and get involved in litigation and incur legal costs specially when the additions/disallowances made were revenue neutral and had been allowed as expenses reducing the

income in the subsequent assessment years. The appellant-assessee was not to gain any substantial benefit and advantage by shifting profits or loss from one year to another.

16. These facets and aspects have been completely ignored by the Tribunal in their reasoning. These aspects were relevant and had required due consideration when examining the issue of *bona-fides* in making the claim.

17. On the question of full and true disclosure, we would like to refer the accounts of the appellant-assessee that were audited. The audit report placed on record had stated that the appellant-assessee had recognized revenue from the projects based on PoC Method in relation to sold areas on the basis of percentage of actual construction and other related costs incurred thereon excluding land cost as against the total estimated cost of the project under execution subject to such actual cost being 30% or more of the total estimated cost. Similarly, there were disclosures under the heading 'inventory and cost of construction/development' to the effect that 'work in progress' was valued at lower of the cost than net realizable value, cost of pricing of land including development rights, material services and other overheads. Costs of construction/development incurred would be discharged to the profit and loss accounts proportionate to the project area sold, in cases where threshold of 30% had been exceeded. Full details with regard to the expenses claimed under selling, administrative and another expenses had been disclosed. As noticed above, the figures given in columns and heads have not been disturbed by the Assessing Officer and no addition has been made by doubting and disturbing the figures and amounts mentioned. The

Tribunal has also not stated that full and complete disclosure of material facts was not made by the appellant-assessee.

18. Given the aforesaid facts, i.e. the relevant clauses of AS-7, applicable Guidance Notes, the fact that the accounts were duly audited and the disclosures made in the audit notes, the loss income as declared, small taxable income as assessed even after the additions were made and that the expenses as claimed were otherwise eligible and allowed in the next assessment year, we would accept that the appellant-assessee had shown that they had acted *bona fide*. Thus, the appellant-assessee should not have been burdened with penalty for concealment of income under Section 271(1)(c) of the Act.

19. Accordingly, we answer the substantial question of law in favour of the appellant-assessee and against the respondent-revenue. However, in the facts of the case, there would be no order as to costs. All the pending applications stand disposed of.

SANJIV KHANNA
(JUDGE)

ANUP JAIRAM BHAMBHANI
(JUDGE)

DECEMBER 19, 2018
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