IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

Before Shri Shailendra Kumar Yadav, Judicial Member,
and Shri R.K.Panda, Accountant Member.

ITA.No.1273/PN/2011
(Asstt. Year : 2005-06)

DCIT, Cricle-2,
Pune. .. Appellant

Vs.

M/s.Raviraj Company Associates,
Office No.1 to 5,
Millennium Star,
Dhole Patil Road,
Near Ruby Hall Clinic,
Pune – 411001. .. Respondent
PAN: AAOFR5299P

Assessee by	:	Shri Vipin Gujrathi
Department by	:	Shri Rajib Jain
Date of Hearing	:	08.02.2013
Date of Pronouncement	:	27.02.2013

ORDER

PER SHAILENDRA KUMAR YADAV, JM:

This appeal has been filed by the Revenue, wherein deletion of penalty of Rs.8,72,520/- levied on assessee u/s.271(1)(c) has been opposed.

2. The assessee is a builder and he claimed deduction u/s.80IB(10) comprised of total built up area of 20,254.63 sq.mt. out of which residential units is 17,947.14 sq.mt., and built up area of shops constructed on the amenity space is 2309.254 sq.mt. During the year under consideration, a part of the built-up area which comprised 11 residential units and 10 shops were sold by the assessee for which the deduction of Rs.32,82,193/- was claimed and the return showing nil income was filed on 31.08.2005. During the assessment proceedings for A.Y. 2003-04 the assessment of

which was going on and the same was finalised on 28.02.2006. Therein it was held by the Assessing Officer that the profits derived from construction on the amenity space is not eligible for deduction. The assessee withdrew the claim of deduction vide its letter dated 14.12.2007 to the extent of Rs.13,22,685/- out of the total deduction claimed. The Assessing Officer reduced it further and worked out the quantum of profit in respect of commercial area at Rs.21,86,470/-. The said project was approved by the Pune Municipal Corporation in accordance with the DC Rules as a housing project on 06.10.2000 and the completion certificate has been obtained vide certificate dated 31.03.2003. Therefore, the commencement as well as the completion of the project has been before the amendment to section 80IB(10) which was brought w.e.f. 01.04.2005 wherein restriction in the commercial area of 2000 sq.ft. or 5% of the built up area whichever was lower was introduced. Hon'ble Bombay High Court in Brahma Associates,239 CTR 30, held that deduction u/s.80IB(10) is allowable to housing project approved by the local authority having residential units with commercial user to the extent permitted under DC Rules framed by the local authority.

3. In this background stand of the assessee has been that benefit of the above decision of the Hon'ble Bombay High Court could not be availed by the assessee at relevant point of time. However, it was claimed that assessee was entitled for full claim u/s.80IB(10) and has been wrongly withdrawn. So the penalty should not have been levied and the CIT(A) has rightly deleted the penalty. As the assessee has disclosed entire claim u/s.80IB(10) in return of income filed for A.Y. 2005-06, which was subsequently withdrawn during A.Y. 2003-04 and Assessing Officer in assessment proceedings has reduced the claim on account of calculation of profit for the residential and commercial part sold by the assessee during the year under consideration. The facts emerged that assessee made a claim which was subsequently withdrawn without prejudice to the legal position at the relevant point of time. The

penalty in question is emerging on account of original claim of deduction u/s.80IB(10). The issue of deduction u/s.80IB(10) was debatable issue at relevant point of time. The assessee has disclosed all the relevant facts and acted bonafide. It was only difference of opinion between assessee and the Assessing Officer and assessee accepted the opinion of the Assessing Officer and withdrawn the claim, instead of preferring an appeal for reasons known to it. It is settled legal position that penalty is not automatic after quantum addition. Both penalty as well as quantum addition stands in its own spheres. In this background, the CIT(A) was justified in deleting the penalty in question which needs no interference from our side.

4. As a result, the appeal filed by the Revenue is dismissed.

Pronounced in the open court on this the 27th day of February, 2013.

Sd/-	Sd/-
(R.K.PANDA)	(SHAILENDRA KUMAR YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

gsps

Pune, dated the 27th February, 2013

Copy of the order is forwarded to:

1. The Assessee
2. The DCIT, Circle-2, Pune.
3. The CIT(A)-II, Pune.
4. The CIT-II, Pune.
5. The DR “B” Bench, Pune.
6. Guard File.

By Order

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Private Secretary,
Income Tax Appellate Tribunal,
Pune.