

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “J”, MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.465/M/2021
Assessment Year: 2012-13**

DCIT 3(1)(2), Room No.1603, 16 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s. Kingfisher Capital CLO. Ltd., C/o Vaish Associates Advocates 106, Peninsula Centre, Dr. SS Rao Road, Parel, Mumbai – 400 012 PAN: AAECK3136A
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Rajneesh Yadav, D.R.

Date of Hearing : 27 . 04 . 2022
Date of Pronouncement : 10 . 05 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, DCIT 3(1)(2), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 29.03.2018 passed by Commissioner of Income Tax (International Taxation)-3 Mumbai [hereinafter referred to as the CIT(IT)] qua the assessment year 2012-13 on the grounds inter alia that :-

“1. Whether on the facts and circumstances of the case and in law, the Ld. has erred in deleting the penalty in respect of redemption premium of Rs.5,30,21,996/- received by the assessee company, which

was disclosed assessee company during the scrutiny proceedings after the issue of notice u/s 143(2) of the Income Tax Act,1961?

2. The appellant prays that the order of the Ld.CIT(A) on the above ground(s) be set aside and that of the Assessing officer be restored.?

3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.?"

2. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of assessment framed under section 143(3) read with section 144C(3) of the Income Tax Act, 1961 (for short 'the Act') dated 13.05.2015 revising the total income to Rs.1,80,03,34,151/-, penalty proceedings under section 271(1)(c) of the Act were initiated. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to conclude that the assessee has deliberately concealed the income by furnishing inaccurate particulars of income to reduce their tax liability and thereby levied the penalty to the tune of Rs.91,19,56,419/- being 100% of the tax sought to be evaded under section 271(1)(c) of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has deleted the penalty by accepting the appeal filed by the assessee. Feeling aggrieved, the Revenue as has come up before the Tribunal by way of filing the present appeal.

4. Despite issuance of the notice to the assessee company none appeared on behalf of it, so the Bench decided to decide this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue

Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. At the very outset, it is brought to the notice of the Bench that respondent-assessee company has since been liquidated by the National Company Law Appellate Tribunal (NCALT) vide order dated 07.11.2019 and as such no longer in existence. This fact has also been brought on record by Vaish Associates Advocates vide their letter dated 18.11.2021 being attorney of the respondent company.

7. In view of the matter, we are of the considered view that when the respondent company has already gone into liquidation vide order dated (supra) and is no more in existence the present appeal filed by the Revenue is not maintainable in the present format as liquidator has not come up before the Tribunal despite numerous notices to file the amended form 36A in the present appeal. So in these circumstances present appeal is not maintainable in the present format.

8. Resultantly, aforesaid appeal is dismissed being not maintainable at this stage, with liberty to file fresh one in proper format duly verified by the person authorized to file the return of income, if need be, or to get the present appeal restored by moving an application.

Order pronounced in the open court on 10.05.2022.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Mumbai, Dated: 10.05.2022.

* Kishore, Sr. P.S.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.