Date: 27-01-2020

From:
Silver Oak Realty,
5-4-187/3 & 4,2nd Floor,
Soham Mansion,
M.G. Road,
Secunderabad – 500 003.

To:
Asst. Commissioner of Income-tax,
Circle 10(1)/Hyd,
I.T. Towers, A.C. Guards,
Masab Tank,
Hyderabad – 500 004.

Sir/Madam,

Sub: Reply to notice u/s.274 r.w.s. 270A – Own case – Assessment Year 2017-18

PAN – AAJFM0647C – Reg.

Ref: Notice u/s.274 dated 29-12-2019 – DIN & Notice Novita/PN;/S/270A/ 2019-20/1023388215(1).

We are in receipt of the above referred Notice u/s.274 for Assessment Year 2017-18. In reply the following is submitted for your kind consideration.

1. At the outset we would like to submit that the Notice u/s.274 r.w.s. 270Adoes not indicate whether the penalty proposed to be levied is for under-reporting of income or for misreporting of income.It is imperative to state in the Notice issued as to whether the penalty is proposed to be levied for under-reporting of income or for misreporting of incomeso as to submit proper reply to such notice. It is furthermore imperative as the amount of penalty livable is also different for under-reportingu/s 270A (7) and for misreporting of income u/s 270A (8).
2. The above newly inserted Section 270A w.e.f. Assessment Year 2017-18 is similar to erstwhile section 270(1)(c) so far as it relates to levy of penalty either on income concealed or for furnishing of accurate particulars of income. There are plethora of judgments including that of Apex Court holding that the penalty notices are invalid and quashed in the cases where said notices did not state whether the penalty is levied for concealment of income or for furnishing inaccurate particulars of income.

27/01/2020
प्राप्त/Received
आवक/INWARD
रेंज-10, हैदराबाद
Range-10, Hyderabad

vii) The accounts of the firmhave also been audited u/s.44AB and no misrepresentation or suppression of fact is pointed out in the assessment order.

In view the above fact, it is submitted that there is no misreporting of income within the meaning of provisions of section 270A(9)(a) and therefore no penalty is leviable as proposed in the Notice.

b) In the event the Notice viewed that there is under reporting of income:

i) The assessment is completed u/s.143(3) vide Order dated 29-12-2019 assessing the income at Rs.1,58,40,106/-

ii) While computing the assessment an addition of Rs.1,40,82,226/- is made to the income returned of Rs.17,57,820/-.

iii) The addition made is solely on resorting to making an estimate of Gross Profit on one the project phase VII undertaken in pursuance of the business of the firm.

iv) The estimate of gross profit is resorted to without rejecting the audited books of accounts u/s 44AB of the Income Tax Act.

v) Further, the gross profit is estimated on the Turnover of the project not only for the previous year relevant to assessment year 2017-18 but also on the Turnovers pertaining to earlier Assessment Years 2015-16 and 2016-17. The Turnover for the previous year relevant to Assessment Year 2017-18 is only Rs.80,00,000/-.Against this the turnover of Rs.12,99,50,910/- has been adopted to compute the estimated Gross Profit.

vi) In the course of assessment proceedings, the reasons for lower gross profit margin have been explained and have also explained as to why the GP% of Project Phase VII is not comparable with that of other projects carried on by the firm.

vii) The explanations and details furnished in the course of assessment proceedings are *bona fide* explanations. We have disclosed all material facts to substantiate the explanations offered. The Gross profits returned is supported by audited books of accounts u/s.44AB and no defect whatsoever has been pointed

3. Since the above referred Notice issued do not sate whether the penalty is proposed to be imposed for under reporting of income or for misreporting of the income, we submit that the Notice is an invalid notice and bad in law. It is therefore submitted to drop the penalty proceedings initiated.
4. Without prejudice to the above stand we submit the following:

   a) In the event the Notice is viewed that there is misreporting of income.

   i) Section 270A(9)(a) to (f) provides for cases of misreporting.

   ii) In the assessment order passed u/s. 143(3) it is stated at the end of the order that penalty u/s270A(9)(a) of the Act are initiated separately.

   iii) Section 270A(9)(a) reads as under

   a) The cases of misreporting of income referred to in sub section (9) shall be the following namely;

   I) misrepresentation or suppression of facts;

   II) ---------;

   III) -----; ------

   iv) In the assessment Order passed u/s.143(3), there is no whisperwhatsoever as to we have either misrepresented orsuppressed any fact.

   v) The details called for in the course of assessment proceedings have been submitted factually without any misrepresentation and/or suppression of any fact. The information as called for are furnished in detail and in transparent manner giving the real and actual gross profits margins earned for the different projects of the firm. Basing only on these statements and details you could gather that gross profit for project phase VII is lower as compared to other projects. You could also gather from the same set of details that in earlier years the estimates of the gross profit on the project is higher than the actual gross profit earned at the end of the project.

   vi) Thus, there is neither misrepresentation of any fact nor any suppressionof any fact.

out while passing the assessment order. Thus, our explanations given are *bona fide* and fullysubstantiated with the audited books of accounts.

Keeping in view the above fact it is submitted and pleaded that the penalty is not leviable for under reported income in accordance with provisions of section 270A(6)(a).

It is once again reiterated thatno penalty is leviable u/s270A either

i) as the Notice issued is invalid and bad in law, or
ii) there is no misreporting of income, or
iii) there is no under reporting of income

It is pleaded to drop the penalty proceedings initiated.

Alternately, since an appeal has been filed on 24-01-2020 before CIT (Appeals)-6 aggrieved by the assessment order passed u/s.143(3), the penalty proceedings be kept in abeyance till its disposal,

Yours faithfully,

For SILVER OAK REALTY

PARTNER