

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.5502/M/2013
Assessment Year: 2005-06**

DCIT, Rg.9(1), R.No.223, Aayakar Bhavan, M.K. Road, Mumbai - 20	Vs.	M/s. Choudhari Hotels & Restaurants Pvt. Ltd., 354, Linking Road, Khar (W), Mumbai – 400 101 PAN: AAACC0742L
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Dr. S. Pandian, D.R.

Date of Hearing : 28.03.2016
Date of Pronouncement : 31.03.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the action of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] in deleting the penalty levied by the Assessing Officer (hereinafter referred to as the AO) under section 271(1)(c) of the Act.

2. The notice in this case has been served on the assessee time and again but till date no one has ever come present on behalf of the assessee. Hence, we proceed to decide the appeal of the Revenue by hearing the Ld. D.R.

3. The Ld. D.R. has stated that the penalty in this case has been levied by the AO on account of change of head of the income. The assessee had offered the income as business income earned as commission on the sales made by Reliance Web Store Ltd. operating from a portion of the hotel of the assessee.

The AO observed that the said commission income was the rental income of the assessee.

4. However, a perusal of the order of the Ld. CIT(A) reveals that the Ld. CIT(A) has noted that the assessee had disclosed all the material facts relevant to the computation of income in the return of income itself. The assessee had offered as business income under bonafide belief. However, the AO has assessed the same under a different head. The AO, however, has not brought out the essential requirements of the section 271(1)(c) for imposition of penalty i.e. furnishing of inaccurate particulars of income or concealment of income. The Ld. CIT(A), thus, has held that the penalty was not sustainable in this case.

5. We have gone through the assessment order, penalty order and the impugned order of the Ld. CIT(A). We find that the assessee had offered the commission income as business income because the assessee had offered a portion of its hotel premises to the Reliance Web Store Ltd. along with facilities for running of the store and that the assessee was offered commission income on the basis of the sales done by the Reliance Web Stores. The assessee was under bonafide belief that the commission income was the business income. Though the AO had assessed the same under different head but there is no allegation that the assessee had filed any inaccurate particulars of income or had concealed its income. We do not find any infirmity in the order of the Ld. CIT(A) in deleting the penalty levied by the AO under section 271(1)(c) of the Act. There is no merit in the appeal of the Revenue and the same is therefore hereby dismissed.

Order pronounced in the open court on 31.03.2016.

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 31.03.2016.

* Kishore, Sr. P.S.

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.