

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

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.6887/M/2013
Assessment Year: 2008-09**

M/s. Rohan Developers Pvt. Ltd., 2 nd Floor, 12/14, Govardhan Building, Parekh Street, Prarthana Samaj, Mumbai - 04 PAN: AACCA7661A	Vs.	ACIT – Central Circle-44, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Shri B.S. Bist, D.R.

Date of Hearing : 04.10.2016
Date of Pronouncement : 07.10.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30.09.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09. The assessee has agitated the levy of penalty under section 271(1)(c) of the Act.

2. The brief facts of the case are that the assessee is engaged in the profession of builders and developers. During the assessment proceedings under section 143(3) of the Act, the Assessing Officer (hereinafter referred to as the AO) found that the assessee had claimed certain consultancy charges of Rs.12,91,284/-. On perusal of the details, he found that the said expenditure was incurred for the purpose of obtaining consultancy for an ongoing project situated at Nepean Sea Road and further that the assessee had not offered any

income from the said ongoing project. The said project was shown as work in progress. The AO, therefore, treated the said consultancy charges incurred on the said project as WIP and held that the assessee would be eligible to claim the said expenditure in the year when the income from the said project will be offered for taxation. He also initiated penalty proceedings in this respect. During the penalty proceedings, the assessee explained that there was no deliberate act on the part of assessee in concealing any part of its income or in furnishing of inaccurate particulars of income. That the computation of income submitted was under bonafide belief. Otherwise, the assessee has not claimed any bogus expenditure. The AO has only postponed the claim of expenditure till the completion of project. The AO, however, did not get satisfied from the above reply of the assessee and imposed penalty under section 271(1)(c) of the Act.

3. The Ld. CIT(A) also confirmed the penalty. The assessee, thus, has come in appeal before us.

4. The Ld. A.R. has brought our attention to the copy of the letter submitted to the AO in respect of the consultancy charges. The Ld. A.R. has further brought our attention to paper book page 4 which is the copy of the ledger account and has stated that the above said consultancy charges were debited in the ledger account of Nepean Sea Road project inadvertently. He has further submitted that the assessee, in fact, was carrying on various projects at various locations and that the consultancy charges paid were not in respect of Nepean Sea Road project only but in respect of all the projects; That the assessee had not debited any separate consultancy charges in respect of any of the projects. He has further invited our attention to page 10 of the paper book to state that a rectification was also made in the accounts and the consultancy charges earlier debited to Nepean Sea Road project were transferred to P & L account under the heading 'consultancy charges' which were not related to any particular project. He has,

therefore, submitted that the above disallowance during the assessment proceedings was made by the AO due to inadvertent mistake on the part of assessee in debiting the consultancy charges in respect of Nepean Sea Road project only. He has therefore stated that the said expenditure of consultancy charges was otherwise allowable as expenditure. He has further submitted that the penalty proceedings under section 271(1)(c) of the Act are separate and distinct proceedings. Merely because a disallowance has been made by the AO in respect of consultancy charges that itself is not sufficient to hold that the assessee had concealed its income or had furnished inaccurate particulars of income.

5. The Ld. D.R., on the other hand, has submitted that the factum of inadvertent mistake regarding the debiting of consultancy charges in relation to Nepean Sea Road project has not been examined by the AO and hence at this stage the assessee has come with a new plea.

6. We have considered the rival contentions and have also gone through the records. From the considerations of overall facts and circumstances, we find that the AO has not doubted the incurring of the expenditure. It has also not been doubted by the AO that the said expenditure was incurred for business purposes. The said expenditure has been disallowed by the AO for the year under consideration considering the same as part of work in progress. However, the AO has given a categorical finding that the assessee will be eligible to claim the said expenditure on completion of the project or on offering of the income from the said project. The assessee has also explained before us that the assessee, otherwise, was eligible to claim the said expenditure as consultancy charges in general and not related to any specific project but due to some inadvertence the same are debited to a particular project. We do not think that it is a case of any concealment of income or furnishing of inaccurate particulars of income. Under these circumstances, the

penalty levied by the AO and confirmed by the Ld. CIT(A) under section 271(1)(c) of the Act is hereby ordered to be deleted.

7. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 07.10.2016.

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 07.10.2016.

* 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.