

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI NK PRADHAN, AM**

**ITA No. 4919/Mum/2016**

(A.Y. 2010-11)

M/s Acme Housing India Private Limited, Building 10, 5 <sup>th</sup> Floor, Solitare Corporate Park, Guru Hargovindji Rd, Andheri (E), Mumbai-400 093	Vs.	The Dy. Commissioner of Income Tax, Central Circle 9, Mumbai
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AADCA0705E</b>		

**Assessee by** : Jitendra Jain, AR

**Revenue by** : Virender singh, DR

**Date of hearing:** 01-05-2018 **Date of pronouncement :** 11-05-2018

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-48, Mumbai [in short CIT(A)], in appeal No. CIT(A)-48/I.T-233/DCCC-09/2013-14 dated 03.05.2016. The Assessment was framed by the Deputy Commissioner of Income Tax, Central Circle-9, Mumbai (in short 'DCIT') for the A.Y. 2010-11 vide order dated 03-05-2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the fee paid by



assessee to Municipal Corporation of Greater Mumbai (MCGM) amounting to ₹ 2,96,200/- being regularization fee holding the same as penalty in term of explanation to section 37(1) of the Act. For this assessee has raised the following grounds: -

*“1. The Hon'ble Commissioner of Income Tax (Appeal) - 48, Mumbai [hereinafter referred as CIT(A)] erred in confirming the action of the AO in making disallowance of Rs. 2,96,200/- being regularization fees paid to Municipal Corporation of Greater Mumbai (MCGM) holding the same as penalty.*

*The Appellant submits that the payments made to MCGM are on account of the procedural lapses on the part of Appellant hence, the disallowance made by the AO and confirmed by the CIT(A) shall be deleted.”*

3. Briefly stated facts are that the assessee is a Private Limited Company engaged in the business of builders and developers. The AO noticed from the accounts of the assessee during the course of scrutiny assessee that it has made various payments to MCGM which interalia in the business of amounting to ₹ 2,96,200/- on account of fines for amended plan fee and Carriage entrance, etc. According to AO, this amount of ₹ 2,96,200/- being fine for amended plan fees are in the nature of penalty in term of explanation to section 37(1) of the Act and not allowable. Accordingly, assessee preferred the appeal before CIT(A) who also confirmed the action of the AO by observing in Para 8.3 as under : -

*“8.3 I have perused the written submission and paper book filed by the appellant as well as*



*assessment order of the AO and materials on record. In the paper book, the appellant has filed the receipts issued by the MCGM against the payment made by the appellant. The said receipts states the nature of payment as 'fine' for the purposes of "amended plans, carriage entrance etc." In the instant case the appellant filed a receipt of Municipal Corporation of Greater Mumbai (MCGM) contending that fine paid to MCGM was for amended plan fees, carriage, entrance fees, etc. and submits that the same was not paid for any violation of law. The contention of the appellant is not acceptable. Appellant has not filed any notice or letter which it had received from Mumbai Municipal Corporation for the nature of violation of Development Control Rules either before the AC during the assessment proceeding or before me in appellate proceedings. Therefore, in the absence of these vital documents, the contention of the assessee that the payment was made to compensate the MCGM towards procedural lapses in not obtaining prior approval for amending the plan is not proved with documentary evidence. It appears that the assessee had indulged in the construction in gross violation of the sanction plan and illegally and unauthorized carried out the construction work and had to pay the fines for violation of DC Rules. The appellant has not disclosed the relevant facts to prove its claim that the payment to MCGM was in the nature of compensation. The case laws relied on by the appellant shall not come to the rescue of the appellant as they have been rendered on different*



*set of facts. In view of this matter, the disallowance of Rs. 2,96,200/- made by the AO is sustained and this ground of appeal is dismissed.”*

Aggrieved, now assessee is in second appeal before Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. The facts are clear that the assessee has made payments on account of fines for amended plan fees, carriage entrance, etc. as per the vouchers produced before us. Before us, the learned Counsel for the assessee argued that these payments are not for violation of any law or are not prohibited under the law but these are compensatory in nature and for the regularization of the Act of the assessee. The assessee has paid compounding fine to regularise the building plan. The payment of such compounding fine is penalty in the nature of an offence or which is prohibited by law. In our considered view, the builders submit building plan for approval and based on the proposed plan, the Corporation/Municipalities gives approval. It is fact that at the time of approval, the corporation and the builders aware that it is not possible to complete the project as per the proposed plan as there are certain adjustments need to be made at the time of actual execution. As long the actual completion of the projects are within the parameters of approval, the corporation/approving authorities permit the projects as approved with the nominal fine or compounding fee. This is the reason, the corporation has the clause intact in the rules books. If the projects are illegal, which is an offence and cannot be cured, the whole project cannot be approved by the approving authorities, as the same is subject matter of public safety. The penalty can be classified as two types; one charged for violation of law in the nature of offence, which cannot be pardoned by compounding and the second is charged for violation of certain rules which are not in the nature of offences and can be cured by



compounding. In the case of housing/commercial projects, the corporations are aware that there will be certain deviations at the time of approval and no project can be completed without any deviation. The question is, the extent of deviation in a particular case. In case it is within the permissible limits, the approving authorities will allow with compounding the deviation by levying compounding fees. In the given case, the project was completed and the deviations are within the limits, for which the MCGM has approved the project by compounding fees, which is not in the nature of offence nor prohibition of any law. Hence, it is allowable u/s 37(1) of the Act.

5. We find that this issue has been considered by Hon'ble Karnataka High Court in the case of CIT Vs. Mamta Enterprises, [2004] 266 ITR 356 (Kar.), wherein Hon'ble High court has considered this issue in detail and held as under:-

*"The Finance (No.2) Act of 1998 has inserted an Explanation to section 37 of the Income-tax Act, 1961, with retrospective effect from April 1, 1962. The Explanation makes it clear that the assessee who incurs expenditure for any purpose which is an offence or which is prohibited by law is not entitled for deduction of such expenditure incurred by him. The Explanation declares that such an expenditure "shall not be deemed to have been incurred" for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. When the provision is clear and use unambiguous, it is not permissible for the courts to stretch the meaning attached to the provision of law to extend the benefit to a person who violates the law or the regulations/rules made by the Corporation*



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*or the municipal authorities with impunity. The claim for deduction has to be considered in the light of the Explanation given to section 37 of the Act and not with reference to the provision in the Corporation or the municipal law which permits the violator of the provisions of the Corporation or the municipal law to compound the offence either to save the unauthorised or illegal construction put up or to relieve such violator of law from the consequences provided in such Corporation or municipal law. Compounding fees paid to the municipal corporation is a penalty and is not deductible u/s 37.”*

6. In view of the above position, we are of the view that these are not hit by the provisions of explanation to section 37(1) of the Act and are allowable. Accordingly, this issue of the assessee's appeal is allowed.

7. **In the result, the appeal assessee is allowed.**

Order pronounced in the open court on 11-05-2018.

Sd/-  
(NK PRADHAN)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 11-05-2018

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**