



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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

ITA No.3201/Mum/2017

(Assessment Year :2007-08)

M/s. Iraisaa Hotels Pvt. Ltd., D/2, Big Splash Sec-17, Vashi Navi Mumbai – 400 705	Vs.	ITO 15(2)(1) Mumbai
PAN/GIR No.AABCI5332H		
(Appellant)	..	(Respondent)

Assessee by	Shri Pradip M Kapasi
Revenue by	Shri Abi Rama Karthikeyan
Date of Hearing	24/09/2018
Date of Pronouncement	25/09/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-24, Mumbai dated 21/02/2017 for A.Y.2007-08 in the matter of imposition of penalty u/s.271(1)(c) of the IT Act.

2. At the outset, learned AR placed on record the quantum order of the Tribunal, wherein addition with respect to which present penalty has been levied u/s. 271 (1) (c), has been deleted by the Tribunal vide its order dated 08/09/2017. We have gone through the orders of the authorities below and found that penalty was levied with respect to addition of Rs.36 lakhs to the business income of the assessee.

3. We found that this addition has been deleted by the Tribunal vide its order dated 08/09/2017 by observing as under:-

“7. We have heard rival contentions and perused the material available on record. It is evident, there is no dispute about the fact that the assessee and Bhuminath Construction have entered into MoU for development of a Hotel. It is also a fact that as per the terms of MoU, Bhuminath Construction will advance a sum of Rs. 5 crore in installments to the assessee for development of the project. It is also made clear in the MoU that the said amount of Rs.5 crore shall be interest free. Neither of the Departmental Authorities have taken into consideration the advantage derived by the assessee from the interest free fund received by it from Bhuminath Construction. Moreover, it appears that in case of Bhuminath Construction, the Assessing Officer has accepted the compensation paid of Rs. 6,75,150 to the assessee while completing the assessment. Therefore, if actually higher compensation has not been paid to the assessee, no addition can be made notionally and on mere presumption and surmises that the assessee might have received excess compensation or the compensation received is meager.

8. Another important aspect which is necessary to deal with is, though, the learned Commissioner (Appeals) has categorically stated that the Assessing Officer had never doubted the genuineness of the purchases and total cost incurred towards the construction, however, he has sustained the addition primarily for the reason that expenditure incurred by the assessee on account of interest payment at Rs. 9,60,000 is more than the compensation received. However, on a perusal of the audited Profit & Loss account for the year ending 31st March 2007, we find the total expenditure debited to the Profit & Loss account of Rs.6,30,617, including interest expenditure of Rs.1,59,706. Thus, we are unable to understand where from the learned Commissioner (Appeals) has obtained the interest payment amount of Rs.9.60 lakh. Thus, on the basis of such half baked facts addition cannot be made on mere presumption and surmises. Therefore, we have no hesitation in deleting the addition made on estimate basis. However/ the Assessing Officer is directed to bring to tax the compensation received by the assessee from Bhuminath Construction. Grounds no.1 and" 2 are disposed off accordingly.”

4. As the addition with respect to which penalty has been levied have already been deleted by the Tribunal, the order of AO levying penalty u/s.271(1)(C) with respect to such addition has no legs to stand. Accordingly, AO is directed to delete the penalty so imposed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 25/09/2018

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 25/09/2018

Karuna 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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai