

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

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6050/MUM/2017
Assessment Year: 2010-11**

Parle Agro Pvt. Ltd., Western Express Highway, Parsiwada, Chalkala, Andheri (East), Mumbai - 400099 PAN: AAACP8416G	Vs.	The ACIT 10(3)(2), Aaykar Bhavan, 5 th Floor, Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Firoze Andhyarujina (AR)

Revenue by : Ms. Bharti Singh (DR)

Date of Hearing: 10/01/2019
Date of Pronouncement: 05/04/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 28.06.2017 passed by the Commissioner of Income Tax (Appeals)-17 (for short 'the CIT (A)'), Mumbai, for the assessment year 2010-11, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring the total income of Rs. 8,14,58,036/-. The assessment was completed u/s 143 (3) determining the total income at Rs. 9,37,66,547/- after *inter alia* making addition of Rs. 7,31,400/- made under the head 'income from house property'. It was noticed that the assessee had shown rental income at Rs. 18,28,500/- in its audited account, however, it had offered the income of Rs. 10,97,100/- under the said

head and offered the difference of Rs. 7,31,400/- under the head income from business. The AO added the said amount to the income of the assessee under the head house property and accordingly initiated proceeding u/s 271 (1) (c) of the Act for furnishing inaccurate particulars of income. In the first appeal, the Ld.CIT (A) confirmed the penalty of Rs. 2,00,000/- levied by the AO. The assessee is in appeal against the said order.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective ground:

“On the facts and in the circumstances of the case, the learned CIT (A) has erred in upholding the order of Assessing Officer and confirming penalty of Rs. 2,00,000/- which was levied on quantified addition made on account of assessing income under income from house property instead of income from business. The amenities charges of property were assessed as income from house property were caused to reduce total income due to allowing 30% deducting under section 24. Therefore it will not increase in tax liability. These assessing amenities charges received under the head income from house property were not caught by the mischief of section 271 (1) (c). The CIT (A) ignores the decision of Hon’ble ITAT in case of ACIT vs. Vazir Glass Works Ltd. (Mum).

4. At the outset, the Ld. counsel for the assessee submitted that the addition of Rs. 5,11,980/- was made after reducing income under the head income from business. In the audited account, the rental income of Rs. 18,28,500/- was credited to P&L account. However, while offering the rental income an amount of Rs. 10,97,100/- was shown under the head income from house property. The AO while passing the assessment order reduced the amount of Rs. 7,31,400/- from business income and added the same under the head of income from house property. The Ld. counsel further submitted that the assessee has neither concealed its income nor has filed any inaccurate

particulars of his income. Therefore, the impugned order passed by the Ld. CIT (A) is liable to be set aside. The Ld. counsel relying on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Reliance Petroproducts Pvt. Ltd.* 322 ITR 158 (SC) submitted that mere wrong claim made by the assessee does not make the assessee liable u/s 271 (1) (c) of the Act.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the order passed by the Ld. CIT (A) submitted that since the assessee had furnished inaccurate particulars of its income, the Ld. CIT (A) has rightly confirmed the penalty levied by the AO.

6. We have heard the rival submissions and also perused the material on record. We notice that the assessee had shown rental income of Rs. 18,28,500/- in the P&L account however, in the computation of income, the assessee offered rental income of Rs. 10,97,100/- and the difference of 7,31,400/- was shown as income from the business. As explained by the Ld. counsel, the assessee claimed the amenities charged received under the head under the head income from business. The AO rejecting the claim of the assessee added the amenities charges received by the assessee under the head income from house property and initiated penalty proceedings u/s 271(1)(c) of the Act and imposed the penalty for furnishing inaccurate particulars of income. The Ld. CIT(A) confirmed the penalty without taking into considering the fact that assessee has only changed the head of income in respect of part of the income from house property to income from business without concealing its income. Under these circumstances, we find merit in the contention of the Ld. counsel that rejection of assessee's claim of treating amenities charges as income from business does not *ipso facto* make the assessee liable for penalty u/s 271(1)(c) of the Act. The assessee has only changed the head of income by claiming the part of the income from house property under the head income from business that to under a *bona fide* belief that the amount amenities charges received is required to be claimed as business income.

7. As per the ratio laid down by the Hon'ble Supreme Court in the case of *CIT vs. Reliance Petroproducts Pvt. Ltd* (supra), mere making of a claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee within the meaning of section 271(1)(c) of the Act. In the light of the said judgment the claim of the assessee does not amount to furnishing of inaccurate particulars of income. So, the revenue has failed to establish that the assessee has furnished inaccurate particulars in respect of its income, which essential to hold the assessee liable under section 271(1)(c) of the Act. The assessee has only changed the head of income in respect of part of the income from house property by claiming the same under the head income from business. Moreover, the assessee has offered an explanation as to why the part of income from house property was claimed as business income. In our considered view, the explanation offered by the assessee is *bona fide*. Since, the assessee has established before the authorities below that its action was *bona fide*, the Ld. CIT(A) ought to have set aside the order passed by the AO. Hence, in our considered view, the impugned order is contrary to the established principles of law. We therefore, set aside the order passed by the Ld. CIT(A) and allow the sole ground of appeal of the assessee and delete the penal imposed u/s 271(1)(c) of the Act.

In the result, appeal filed by the assessee for assessment year 2010-11 is allowed.

Order pronounced in the open court on 5th.April, 2019.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 05/04/2019

Alindra, PS

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**