

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

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3708/M/2016  
Assessment Year: 2011-12**

Shri Muralilal S. Mody, Vrundavan Bunglow, No.1, Padma Nagar Society, Off. Link Road, Evershine Nagar, Malad (W), Mumbai – 400 064 <b>PAN: AACPM3582B</b>	Vs.	DCIT 24(2), C-13, Pratyakshkar Bhavan, BKC Bandra (E), Mumbai - 400051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Manish J. Sheth, A.R.  
Revenue by : Shri Amit Mohan Mittal, D.R.

Date of Hearing : 09.05.2019  
Date of Pronouncement : 24.05.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 24.02.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The only issue raised by the assessee is against the confirmation of penalty by Ld. CIT(A) as levied by the AO under section 271(1)(c) of the Act on the addition made in respect of unpaid municipal taxes.

3. The facts in brief are that the assessment was framed under section 143(3) of the Act vide order dated on 24.02.2014

assessing the total income at Rs.66,67,850/- as against the return of income at Rs.54,53,038/- by making an addition in respect of mismatch in the rental income as per AIR and return of income of Rs.5044/- and disallowance of unpaid municipal taxes at Rs.11,18,418/-. The penalty was initiated in the assessment order for furnishing of inaccurate particulars of income and concealment of income whereas it was imposed for furnishing of inaccurate particulars of income leading to concealment of income equal to 100% of the tax sought to be evaded which worked out at Rs.3,47,150/- vide order dated 28.08.2014.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by holding that assessee has made a wrong claim which is legally unsustainable and thus justified the imposition of penalty.

5. The Ld. A.R. submitted before the Bench that the two additions on which the penalty was levied by the AO were Rs.5044/- in respect of mismatch for rental income as per AIR and return of income and Rs.11,18,418/- on account of disallowance of municipal taxes liability. The Ld. A.R. submitted that the municipal authorities have raised a very high bill, a part of which was paid and the balance was provided in the books of account thereby making full disclosure of the accounting treatment given to the said amount. Similarly, the second addition on which the penalty was imposed was only in respect of mismatch as per AIR and return of income of Rs.5044/-. The Ld. A.R. submitted that so far as the addition of Rs.11,18,418/- is concerned, assessee has made full and true disclosure in the

books of accounts and there was no intention to conceal the income at all. The Ld. A.R. submitted that the penalty is not imposable where the assessee has made full and true disclosure in the books of accounts as has been held by the Hon'ble Apex Court in the case of CIT v. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158 (SC). The Ld. A.R. therefore prayed before the Bench that penalty may kindly be deleted by setting aside the order of Ld. CIT(A).

6. The Ld. D.R., on the other hand, relied on the orders of authorities below.

7. After perusing the records and hearing the rival parties, we observe that the penalty has been imposed in respect of disallowance of municipal tax liability of Rs.11,18,418/- and discrepancies between ITR and AIR information of Rs.5044/- the Ld. CIT(A) dismissed the appeal of the assessee by holding that assessee has made legally unsustainable claim and thus justified the imposition of penalty. In our opinion, in this case the assessee has made full and true disclosure of the claim made in the books of accounts so far as the claim of M.C. taxes is concerned and for the other addition of Rs. 5,044/- is mere a difference of opinion and is of very petty nature. We, further, note that this has happened because of high bill of demand of M.C. taxes raised by the municipal authorities a part of which was paid and balance was provided by the assessee in the books of accounts. Under these facts and circumstances, we are of the view that the case of the assessee is squarely covered by the ratio laid down by the Hon'ble Apex Court in the case of CIT v. Reliance Petroproducts (P.) Ltd (supra) wherein it has been

held that mere making of claim which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding income of the assessee. We, therefore, not in agreement with the conclusion drawn by the Ld. CIT(A) and accordingly direct the AO to delete the penalty.

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

**Order pronounced in the open court on 24.05.2019.**

**Sd/-  
(Sandeep Gosain)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 24.05.2019.

\* 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.