

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 3130/DEL/2017
[A.Y 2006-07]

M/s Tera Estates [Pvt] Ltd
2802, Top Floor, GNA Building
New Delhi

Vs.

The Dy .C.I.T
Central Circle - 25(1)
New Delhi

PAN: AABCT 5729 R

(Applicant)

(Respondent)

Assessee By : Shri Shailesh Gupta, Adv

Department By : Shri Surender Pal Sr. DR

Date of Hearing : 17.09.2019

Date of Pronouncement : 17.09.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] 13, New Delhi dated 27.02.2017
pertaining to assessment year 2006-07.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in sustaining the levy of penalty of Rs. 10,60,766/- imposed u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. Roots for levy of penalty lie in the assessment order dated 12.12.2008 framed u/s 143(3) of the Act.

4. Returned income of Rs. 35,96,266/- was assessed at Rs. 69,96,800/-. The business loss of Rs. 34,00,538/- was not allowed to be set off against the income from house property.

5. The matter travelled upto the Tribunal and the Tribunal in ITA No 1657/DEL/2014 deleted the disallowance made by the Assessing Officer. The relevant findings of the co-ordinate bench read as under:

"We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee company incorporated as the main object of the company to carry on the business of real estate agents and dealers thereof. It has also the object of hiring of the real estate. During the year that appellant company has filed its return of

income showing income from business of Rs. (-) 3400538/- and shown income from rental under the income from house property of Rs. 6996793/-. Thereby, the assessee has shown the net taxable income of Rs. 3596254/- after inter head adjustment of loss from business and income from house property. The Id Assessing Officer disallowed the claim of the loss of the assessee of Rs. 3400538/- holding that assessee is not carrying on any business as the only income of the assessee is rental income. On looking at the profit and loss account of the assessee the assessee has shown rental income of Rs. 10262919/- which is shown by the assessee as income from house property as per computation of total income at page NO. 28 of the paper book. However, during the year assessee has addition to the already existing closing stock of inventory of Rs. 2455024/- and shown the item in the stock in trade. In view of this, it is apparent that assessee is carrying on the business of purchase and sale of real estate. In its written submission also in para No. 2 assessee has given the brief description of the business activities. These business activities are also shown at page No. 41 of the paper book. The opening stock of the real estate was Rs. 22886575/- and addition thereto during the year was made of Rs. 2455024/- resulting into a closing stock of Rs. 25341599/-. In view of this, it cannot be said that assessee is not carrying on business of real estate. It is apparent that Page | 6 assessee has offered income from

house property of Rs. 6996793/- which is also assessed as such by the Id Assessing Officer. The only dispute is that loss of Rs. 3400538/- incurred by the assessee, which is computed as per page No. 28 of the paper book wherein, depreciation allowance of Rs. 1911447/- along with certain other expenses has resulted into this loss because there is no sale of that real estate which is held by the assessee as stock in trade. The Id CIT (A) has incorrectly held that assessee is not in a business other than rental income for the reason that he has simply ignored the holding of huge inventory held by the assessee of Rs. 2.28 crores since last year. In view of this we are of the opinion that assessee is carrying on business over and above its rental income. It is not the case of the Id Assessing Officer that expenditure debited by the assessee is not verifiable because the books of accounts of the assessee are audited. Further, the claim of the depreciation is also resulting from opening WDV of the assets. In the past years, the assessee has been claiming such expenditure and depreciation. It has been stated before us that such computation has not been disturbed. In view of these facts and circumstances we do not agree with the finding of the lower authorities in rejecting the computation of the business income of loss of Rs. 3400538/-. In the result, we allow ground No. 2 to 4 of the appeal of the assessee reversing the finding of the lower authorities."

6. Sublato Fundamento Cadit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the foundation [assessment] has been removed, the super structure i.e. penalty must fall. Accordingly, the penalty is directed to be deleted.

7. In the result, the appeal of the assessee in ITA No. 3130/DEL/2017 is allowed.

The order is pronounced in the open court on 17.09.2019.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 17th September, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	