

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI

Before S/Shri Pramod Kumar, Vice-President, &  
Saktijit Dey, Judicial Member

ITA No.7448/Mum/2017  
Assessment Year 2010-11

M/s. Sigfriede Infotech Pvt Ltd., (Now Techstar Infotech (India) Pvt Ltd.), 15, Bhandup Village Road, Bhandup (West), Mumbai 400 068.  PAN : AABCS9241D	Vs.	ITO 15(3)(3), Mumbai.
(Appellant)		(Respondent)

Appellant By : Shri Anuj Kisnadwala  
Respondent By : Shri V Vinod Kumar

Date of Hearing :17.09.2019

Date of Pronouncement : 30.09.2019

**ORDER**

**Per Saktijit Dey, Judicial Member:**

This is an appeal by the assessee against the order dated 18.09.2017 of learned CIT(A)-24, Mumbai confirming penalty imposed u/s. 271(1)(c) of the Act for A.Y. 2010-11.

2. Briefly, the facts are, the assessee company is engaged in the business of development of land and property. In the course of such activity, the assessee has let out a property to Mahanagar Telephone Nigam Ltd. (MTNL). For the year under dispute, the assessee filed its return of income on 11.05.2011 declaring loss of Rs. 8,223/-. The income shown by the assessee

is from interest on Fixed Deposit and rental income received from letting out property. In the course of assessment proceedings the Assessing Officer found that, though, as per Form 26AS, the assessee has received rental income of Rs.35,98,356/- from MTNL, however, it had not offered such income to tax. Therefore, he asked the assessee to explain the reason for not doing so. In submissions dated 17.10.2012, it was stated by assessee that the leave and license agreement with MTNL was not renewed due to dispute and MTNL has illegally occupied the premises even after the expiry of the agreement. It was submitted, assessee had filed suit for eviction against MTNL and also sought compensation for illegal possession. It was submitted, the amount in dispute was paid by MTNL by way of ECS and directly credited to assessee's account and assessee had not control over it. Therefore, assessee had not considered it as income, since, acceptance of the said amount would have jeopardized its legal rights and contentions. It was submitted, due to the aforesaid reasons, the amount received from MTNL was accounted as MTNL deposit under other Current Liabilities. The Assessing Officer, however, did not find merit in the submissions of the assessee and added the amount of Rs.35,98,356/- as "Income from house property". Further, the Assessing Officer found that the assessee had not offered interest income of Rs. 1,67,397/-. Accordingly, the said amount was also added to the income of the assessee. On the basis of aforesaid additions the Assessing Officer initiated proceedings for imposition of penalty u/s.

271(1)(c) of the Act alleging furnishing of inaccurate particulars of income and ultimately, passed order u/s. 271(1)(c) of the Act imposing penalty of Rs.8,30,050/- in respect of both the additions. The penalty so imposed was also confirmed by learned CIT(A).

3. The learned AR submitted, in so far as the addition made on account of rental income from MTNL is concerned, the issue has been restored to the file of the Assessing Officer by the Tribunal while deciding the assessee's appeal in ITA No. 7545/Mum/2013 dated 22.05.2019. Thus, he submitted, since by virtue of the aforesaid order of the Tribunal no addition in respect of rental income exists against the assessee, the penalty imposed on such addition has to be deleted. In so far as, penalty imposed on the addition made on account of interest income, the learned AR submitted, due to inadvertence the assessee did not offer the interest income to tax while filing its return of income. However, when this fact was brought to the notice of the assessee in the course of assessment proceedings, the assessee admitted its mistake and offered the amount to tax. Thus, he submitted since non-disclosure of interest income was due to bona fide mistake and not deliberate, no penalty should be imposed u/s. 271(1)(c) of the Act.

4. The learned DR strongly relied upon the observations of the Assessing Officer and learned CIT(A).

5. We have considered rival submissions and perused material on record. Undisputedly, in so far as addition relating to the amount received as rental income from MTNL is concerned, the dispute has travelled up to the Tribunal and the Tribunal while deciding assessee's appeal has restored the issue to the file of the Assessing Officer for fresh adjudication. Thus, at this juncture, the addition of rental income is not in existence. That being the case, penalty imposed u/s. 271(1)(c) of the Act in respect of such addition cannot survive. Therefore, to that extent the order of learned CIT(A) confirming the imposition of penalty; u/s. 271(1)(c) of the Act is set aside and the issue is restored back to the file of the Assessing Officer for considering afresh, if warranted, depending upon the decision to be taken by him on the issue in quantum proceedings. In so far as the imposition of penalty on the addition made on account of interest income, though it may be a fact that in the return of income assessee has not offered it to tax, however, in the course of assessment proceedings when the Assessing Officer brought this fact to the notice of the assessee, the amount was offered to tax. Thus, the explanation of the assessee that it was not offered to tax due to inadvertence and is a bona fide mistake, appears to be plausible. That being the case, in our considered opinion, no penalty u/s. 271(1)(c) of the Act is required to be imposed on the addition of Rs.1,67,397/- as it can neither be construed as concealment of income nor furnishing of inaccurate particulars of income. Accordingly, we delete the penalty imposed on the addition of Rs.1,67,397/-.

Grounds are partly allowed.

6. In the result, assessee's appeal is partly allowed.

Order pronounced in the open court on this 30<sup>th</sup> day of September, 2019.

Sd/-  
**(Pramod Kumar)**  
**VICE-PRESIDENT**

Sd/-  
**(Saktijit Dey)**  
**JUDICIAL MEMBER**

Mumbai; Dated : 30<sup>th</sup> September, 2019.

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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. DR, 'G' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai