

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

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

**ITA No. 7275/MUM/2019
Assessment Year: 2013-14**

Elcome Properties Private Limited, A06, Info City – 1, Sector – 34, Gurgaon, Haryana - 122002 PAN: AABCE8665M	Vs.	The Dy. Commissioner of Income Tax-15(1)(1), Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri Ashok Puri (AR)

Revenue by : Shri Amit Pratap Singh (DR)

Date of Hearing: 22/01/2020

Date of Pronouncement: 31/01/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 19.08.2019 passed by the Commissioner of Income Tax (Appeals)-24 (for short 'the CIT(A), Mumbai for the assessment year 2013-14, 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 company engaged in the business of Letting out & Renting Properties for commercial purpose, filed its return of income for the assessment year under consideration declaring total income at Rs. 1,11,14,773/-. Since, the assessee had credited an amount of Rs. 1,67,77,800/- as rent received in P & L account, AO asked the assessee to explain why the rental income should not be treated as income from house property. The assessee contended that since the main object of the company is to earn business profit by carrying on the business of leasing, the company has been treating the income from letting out of building under the head income from business. However, the AO rejected the contention of the assessee

and treating the said income as income from the house property computed the total income at Rs. 1,43,24,655/-. In the first appeal, the Ld. CIT(A) confirmed the action of the AO. The AO initiated penalty proceedings u/s 271 (1) (c) of the Act and imposed penalty of Rs. 54,43,557/-. However, in the second appeal, the “E” Bench of the Tribunal set aside the order passed by the Ld. CIT (A) and decided the issue in favour of the assessee. Accordingly, the Bench directed the AO to treat the income of the assessee from letting out of the property as business income. The Ld. CIT(A) confirmed the penalty order passed by the Ld. CIT(A). The assessee is in appeal before the Tribunal against the order passed by the Ld. CIT (A).

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

“The CIT (Appeals) 24 has erred in law and on facts of the case in confirming the penalty.”

4. At the outset, the Ld. counsel for the assessee submitted that since the Tribunal has decided the issue involved in the quantum appeal in favour of the assessee, the penalty proceedings confirmed by the Ld. CIT (A) has become infructuous. Therefore, the assessee’s appeal may be allowed and the penalty imposed may be deleted.

5. On the other hand, the Ld. Departmental Representative (DR) fairly admitted that the ITAT has decided the quantum appeal in favour of the assessee. Therefore, no penalty can be imposed u/s 271 (1) (c) of the Act.

6. We have heard the rival submissions and perused the material on record as pointed out by the Ld. CIT (A) for the assessee. We notice that the Ld. CIT(A) has passed the impugned order on 19.08.2019 and the Tribunal has decided the quantum appeal in favour of the assessee on 25.09.2019. As pointed out by the Ld. counsel, the Tribunal has decided the quantum appeal in favour of the assessee and directed the AO to treat the income from letting out of house under the head income from business. The operative part of the order of Tribunal read as under:-

6. In the aforesaid case the assessee declared the rent received amounting to Rs., 2,68,03,169/- and claimed various expenses, however, the AO treating the said income as income from house property completed the assessment u/s 143(3) of the Act , as against income from business income claimed by the assessee. The first appellate authority confirmed the findings of the AO. The findings of the authorities below were reversed by the coordinate Bench and directed the AO to treat the income in question as income from business. Since, the coordinate Bench has decided the identical issue in favour of the assessee , we do not find any reason to take a divergent view. Hence, respectfully following the decision of the coordinate Bench rendered in assessee's own case for the assessment year 2011-12 discussed above, we allow this ground of appeal of the assessee and set aside the impugned order passed by the Ld. CIT(A). Accordingly, we direct the AO to treat the income of the assessee from letting out of the property earned by assessee as business income."

7. Since, the "E" Bench of the Tribunal has decided the quantum appeal in favour of the assessee, the penalty levied u/s 271(1)(c) of the Act does not survive. In view of the aforesaid facts, the penalty order confirmed by the Ld. CIT(A) has become infructuous. Hence, we allow the appeal of the assessee and direct the AO to delete the penalty.

In the result, appeal filed by the assessee for assessment year 2013-2014 is allowed.

Order pronounced in the open court on 31st January, 2020.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 31/01/2020

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**