

**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI M BALAGANESH, AM

आयकर अपील सं/ **ITA No. 6476/Mum/2011**

(निर्धारण वर्ष / Assessment Year 2007-08)

Alfa Properties & Investment P. Ltd. C/O Royal Palms (I) P. Ltd., Survey No.169, Aarey Colony, Unit No.26, Goregaon (E), Mumbai-400 065	बनाम/ Vs.	The Dy. Commissioner of Income Tax Circle 9(1), Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
<b>स्थायी लेखा सं./PAN No. AAACA9459J</b>		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Michael Jerald, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	07.01.2020
घोषणा की तारीख / Date of pronouncement	0402.2020

**आदेश / O R D E R**

महावीर सिंह, उपाध्यक्ष /

**PER MAHAVIR SINGH, VP**

This appeal by assessee is arising out of order of the Commissioner of Income Tax (Appeals)-19, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-19/9(1)/I.T. 41/10-11 vide dated 15.06.2011. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle 9(1), Mumbai (in short DCIT/ AO) for the A.Y. 2007-08 vide order dated 27.11.2009 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalty was levied by Dy. Commissioner of



Income Tax, Circle-9(1) under section 271(1)(c) of the Act vide order dated 21.05.2010.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in levying penalty under section 271(1)(c) of the Act on disallowance of rent payment made by assessee without deducting TDS under section 40(a)(ia) of the Act amounting to ₹61,72,064/-. For this, assessee has raised the following grounds: -

*"(1) PENALTY ON DISALLOWANCE OF RS. 61,72,064/- OUT OF RENT U/S. 40(a)(ia).*

*(1) The learned CIT(A)-19, Mumbai [referred as "CIT(A)"] mud in confirming penalty on disallowance out of tent u/s. 40") of the Act disregarding the fact that there was no concealment of any income or particulars within the meaning of section 271(1)(c) read with Explanation 1.*

*(2) The learned CIT(A) failed to appreciate that Your Appellant had given a bonafide and genuine explanation wide tater dated 4" Jan, 10 stating, in addition to the other, that the alleged amount of TDS was paid alongwith interest vide paid challan dated 24<sup>th</sup> Dec., 09 which in purview of the*



*proviso to the said section was allowable in the year of payment of the TDS.*

*(3) The learned CIT(A) ought to have appreciated that the alleged amount of disallowance was a technical disallowance under the provisions of section 40(a)(ia) of the Act and that the bonafide explanation was already given.*

*(4) On the facts and circumstances and in view of the bonafnde and genuine explanation, Your Appellant prays that the penalty levied on the disallowance under the provisions of section 40(a)(ia) of the Act may be cancelled."*

3. We have heard the learned Sr. DR. and gone through the facts and circumstances of the case. We noted that the assessee has paid the amount of TDS along with interest vide challan No. 24.12.2009 and it is in accordance with the proviso to said section and was allowable as payment of TDS is within the due dates. It is noted that simply for the reason of non-deduction of TDS disallowance can be made but it does not attract penalty provisions under section 271(1)(c) of the Act in view of the precedent of ITAT Ahmadabad Bench in the case of ITO vs. Shri Vishal Madusudanbhai Chokshi 2014 (1) TMI 910, wherein it is held as under: -



*"Deletion of penalty u/s 271(1)(c) of the Act - Held that:-*

*The Assessing Officer has nowhere alleged that the payment of interest made to finance company on which the TDS was deductible is non genuine or bogus - It is also a fact that there is nothing on record or alleged that the payment of interest is excessive or unreasonable - The disallowance has been made for non-deduction of TDS in view of provisions of section 40(a)(ia) - The legal fiction created by section 40(a)(ia) will not attract penalty for furnishing of inaccurate particulars of income because there is no inaccurate particulars in the return of income."*

4. We also noted that the Hon'ble Gujarat High court in the case of CIT vs. M/s. Venus Engineers 2011 (8) TMI 1163 (Guj.) (HC) held as under: -

*"4. On hearing learned Counsel Mrs.Mauna M. Bhatt and on examining the orders of adjudicating authorities, it can be seen that Tribunal was of the opinion that due to ignorance of the provision containing in Section 40(a)(ia) of the Act, the assessee did not deduct TDS from the*



*payment made to labour, transport and carting expenses. The Tribunal was also actuated by the fact that the C.A. who audited the accounts of the assessee under Section 44AB did not point out any infirmity on account of non-deduction of IDS., otherwise, all the relevant accounts were adduced before the Assessing Officer. Thus, when the Tax audit report also did not point out the TDS default to the assessee, the Tribunal concluded that the mistake made by assessee was bonafide and the explanation was found genuine.*

*5. The Tribunal drew support from the order of CIT(A) that there was no concealment nor was this is a case of furnishing of inaccurate particulars.*

*6. The reasonings given by both the adjudicating authorities concurrently cannot be held as perverse nor are there any grounds made out by the Revenue to dislodge the findings.*

*Resultantly, when there is no concealment nor any occasion of furnishing inaccurate particulars to bonafide mistake, Tribunal rightly uphold the order of CIT(A), deleting*

*the penalty, therefore, this Tax Appeal merits no consideration as question of law is to be determined. Hence, same is dismissed."*

5. From the above, we noted that the issue is squarely covered. Once, there is non-deduction of TDS on any expenditure disallowance is made but genuineness is not in doubt, penalty u/s 271(1)(c) of the Act cannot be attracted and hence, on this issue, we delete the penalty and allow the appeal of the assessee.

6. Coming to the second issue in this appeal of assessee, we noted that the AO levied the penalty on the rent received of Rs. 4,34,123/- not declared and following are the rent received: -

- (a) *Midtech Pvt. Ltd. : Rs.60,000*
- (b) *Rockwell automation : Rs. 50,000*
- (c) *Huntsman International : Rs. 41,323*
- (d) *Huntsman International : Rs.39,200*
- (e) *Avertis Pharma Ltd. : Rs.2,43,600*

*Rs.4,34,123*

7. We noted that the CIT(A) in quantum proceedings deleted the addition of rent receipts to the extent of Rs. 41,323/- and Rs. 2,43,600/ and balance of Rs. 1,49,600/- was confirmed. Now, the assessee before us raised the ground that only penalty to the extent of Rs.1,49,500/- can be argued. For this, the learned Sr. DR stated that the rent received to the extent of Rs. 1,49,500 was not disclosed by the assessee but from the order



of the CIT(A), it is noticed that the contention of the assessee was that the rent was received in subsequent years and hence, not included in the current year. It was contended before CIT(A) by the assessee that penalty is not imposable since the assessee had disclosed by the facts for the computation of income. It is also added that the expenses offered has not been found to be bogus or malafide and that it cannot be stated that the details supplied in the return of income are not accurate. Hence, before CIT(A) it was contended that no penalty should be levied.

8. We noted from the records and it is clear that there is a rent accrued to the assessee to the extent of Rs.1,49,500/-, which is in dispute, but not disclosed by assessee in the return of income. Even before CIT(A), no evidence was produced in regard to this rent. Now, before us also no argument or no fact is brought on record and hence, the assessee is unable to explain its case that it is a bonafide mistake. In the absence of the same, we confirm the penalty of this amount of rent receipt not disclosed to the extent of Rs.1,49,500/-.

**9. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 04.02.2020

Sd/-  
(एम. बालगणेश / M BALAGANESH)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-  
(महावीर सिंह / MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)



**आदेश की 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

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai