

THE INCOME TAX APPELLATE TRIBUNAL
"SMC-I" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 1793/Mum/2019 (Assessment Year 2005-06)
I.T.A. No. 1794/Mum/2019 (Assessment Year 2006-07)

Sika Properties Pvt. Ltd. 1 st Floor, Cassinath Building, 17 AK Nayak Marg, Fort Mumbai-400 001. PAN : AAACS5212M (Appellant)	Vs.	ITO-3(3)(2) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri Kailash Gaikwad
Date of Hearing	14.10.2020
Date of Pronouncement	15.10.2020

ORDER

These are appeals by the assessee against respective orders of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] confirming the penalty levied u/s. 271(1)(c) of the I.T. Act for A.Y. 2005-06 & 2006-07 respectively.

2. Brief facts of the case pertaining to penalty are that in the assessment proceedings the Assessing Officer made addition on account of house property income. The assessee has offered lease rental income as business income. The Assessing Officer treated it as house property income. When the quantum appeal reached ITAT, the ITAT set aside the issue relating to issue of notice to the assessee u/s. 143(2) of the I.T. Act to the file of the Assessing Officer. Before the order of the ITAT the Assessing Officer also levied penalty u/s. 271(1)(c) of the Act on the impugned additions. When the matter reached to the learned CIT(A), though he noted that the ITAT remitted the issue regarding service of notice to the file of the Assessing Officer, still he proceeded to confirm the penalty.

3. Against this order the assessee is in appeal before the ITAT. I have heard learned Departmental Representative. None appeared on behalf of the assessee. I note that in quantum appeal, the ITAT has set aside the assessment order to the file of the Assessing Officer to examine the assessee's plea as to whether there is proper service of notice u/s. 143(2) of the IT Act or not. In that view of the matter addition no longer survives as it is. Hence, there is no question of sustaining penalty, once the matter is again remitted to the file of the Assessing Officer. Learned CIT(A) has clearly erred in sustaining the penalty on the basis of addition which is again subject matter of Assessing Officer's consideration pursuing to ITAT remitting the matter. In these circumstances in my considered opinion interest of justice demands that since the matter is before the Assessing Officer in as much as issue of service of notice has been remitted by the ITAT to the file of the Assessing Officer, the issue of levy of penalty also needs to be remitted to the file of the Assessing Officer. The Assessing Officer shall take decision in this regard after following the ITAT's direction pertaining to the quantum appeal.

4. In the result, these appeals by the assessee stand allowed for statistical purposes.

Order pronounced under Rule 34(4) of the ITAT Rules on 15.10.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 15/10/2020

Copy of the Order forwarded to :

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

6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai