

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

ITA Nos. 2359 & 2360/Mum/2019
(Assessment Years: 2011-12 & 2012-13)

M/s. Ramdev Synthetics Pvt. Ltd. 20/24, Morarjee Veljee Bldg., 1 st Floor, Kalbhat Lane Kalbadevi, Mumbai-400 001	Vs.	ACIT 4(3)(1), Mumbai
PAN/GIR No. AAACR 2001 F		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Gaurav Kabra
Respondent by	:	Shri Auntan H. Ansari
Date of Hearing	:	13.10.2020
Date of Pronouncement	:	11.12.2020

ORDER

Per Shamim Yahya, A. M.:

These appeals by the assessee are directed against the respective orders of learned Commissioner of Income Tax (Appeals)-9, Mumbai (Id.CIT(A) for short) wherein learned CIT (A) has partly sustained the levy of penalty under section 271 (1)(c) of the Income Tax Act, 1961 ('the Act' for short) as under:

<u>Assessment year</u>	<u>Penalty Sustained</u>
2011-12	740822
2012-13	747371

Facts leading to the levy of penalty are identical.

2. Brief facts of the case are that the Assessing Officer (A.O. for short) made disallowances on three counts as under:

- Disallowance of depreciation for car registered in the name of the director.
- Disallowance of depreciation claimed on house used as residence by the director.
- Disallowance of interest under section 40(a)(ia) for non-deduction of TDS.

3. Penalty was also levied on the above heads. Learned CIT appeals deleted the penalty on account of depreciation which was disallowed as the car was registered in the

name of the director. However he sustained the levy of penalty on account of disallowance of depreciation claimed on house used as residence by the director and also on account of disallowance of interest for non-deduction of TDS.

4. Against the order assessee is in appeal before us.

5. We have heard both the parties and perused the records. As regards the penalty on depreciation which was disallowed as the house was used as residence by the director, in our considered opinion, the penalty u/s.271(1)(c) is not exigible on the said disallowance. The house was being used as residence by a director. It is not the case that the director was not entitled to use the said residence as per the terms of agreement with the company. In this view of the matter, the very disallowance of depreciation is on a very hollow basis. In such circumstances, in our considered opinion, no penalty u/s.271(1)(c) can be levied on such a disallowance. Moreover we hold that there is no case of concealment or furnishing of inaccurate particulars of income on this issue. Hence, the assessee deserves to succeed on this reasoning also.

6. As regards the disallowance of interest for non-deduction of TDS is concerned, we find that on this issue again there cannot be case of concealment or furnishing of inaccurate particulars of income. Furthermore, non-deduction of TDS itself leads to separate proceedings against the assessee. Hence, visiting the assessee again with penalty u/s.271(1)(c) will amount to double prejudice, which is not sustainable. Hence, in the background of aforesaid discussion and precedent, we set aside the orders of authorities below and delete the penalty.

7. In the result, these appeals by the assessee stands allowed.

*Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by
placing the details on the notice board on 11.12.2020*

Sd/-

(Amarjit Singh)
Judicial Member

Mumbai; Dated : 11.12.2020
Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai