

THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 4431/Mum/2019 (Assessment Year 2010-11)

Ealdor Retails Private Ltd. (Now merged with Florence Securities Private Limited) SH-4, Raj Tarang, G-1 Shiv Vallabh Cross Road Dahisar East Mumbai-400 068. PAN : AABCE9439P (Appellant)	Vs.	DCIT, Circle-4(2) Central Range-4 Room No. 1918 19 th Floor Air India Building Nariman Point Mumbai-400 021. (Respondent)
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Assessee by	None
Department by	Shri Vijay Kumar Menon
Date of Hearing	02.02.2021
Date of Pronouncement	10.02.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 7.5.2019 and pertains to assessment year 2010-11.

2. Grounds of appeal read as under :-

"The Ld.DCIT 4(2), Mumbai is not justified in:

- 1) Levying penalty u/s 271(1) (c) of the Act amounting to Rs. 2,32,305, whereas as per facts and circumstances the same should not be levied.
- 2) Without prejudice, calculating the tax at the rate of 33.99%, by including surcharge at the rate of 10%, whereas as per Finance Act surcharge is applicable if income exceeds Rs. 1 crore which is not the case of the assessee, hence surcharge is not to be levied.
- 3) Without prejudice, levying penalty of 100% on difference between returned income of Rs. 8,27,9907- and income of Rs. 15,11,441 assessed u/s 143(3) rws 147, whereas the appellant's income was already assessed u/s 143(3) rws 153C of Rs.14,34,370/- in earlier years, hence penalty should be levied on additions made wrt to income assessed u/s

143(3) rws 153C (Rs. 14,34,370/-) in earlier years and income assessed u/s 143(3) rws 147 of the Act (15,11,441/-).”

3. Brief facts of the case leading to levy of penalty are as under :-

The brief facts of the case are that the assessee filed its return of income on 02.10.2010 declaring a total income of Rs. 8,27,9907-. Subsequently, a search action was conducted on Vakrangee Group, wherein the assessee was also covered and the assessment u/s 143(3) r.w.s. 153C was completed on 13.12.2010 at an assessed income of Rs 14,34,3707-. Subsequent to this, information was received by the AO from DGIT(lnv), Mumbai that the expenses claimed by the assessee of Rs. 20.05 crores for the relevant year are not supported by any third party documentary evidences. On the basis of this information, the assessment was re-opened. The re-assessment was completed u/s 143(3) r.w.s. 147 after rejecting the books since, the assessee could not substantiate its claim of expenses for the relevant year. The income of the assessee was thereafter estimated by the AO at Rs. 15,11,441/- @ 0.75% of the gross receipts shown of Rs 20,15,25,477/- and the re-assessment completed on 06.10.2017. The AO, also initiated penalty u/s 271(1)(c) for furnishing of inaccurate particulars of income. Apparently, the assessee did not contest the action of the AO of re-assessing its income at Rs. 15,11,441/-. Thereafter the AO has levied penalty of Rs. 2,32,305/- vide order u/s. 271(1)(c) dated 27.04.2018.

4. Upon assessee's appeal learned CIT(A) confirmed the levy of penalty by observing as under :-

“5.2 The submissions and contentions of the assessee have been duly considered. In the appellate proceedings, the assessee has contended that the AO has estimated its income in the re-assessment order and therefore the action of the AO of levying penalty is not correct. Moreover, the assessee contends that the AO has wrongly levied penalty on the difference between the income computed as per re-assessment order u/s 143(3) r.w.s. 147 and the income as shown in the original return of income as against the difference between the income computed as per re-assessment order and the income earlier determined u/s 143(3) r.w.s. 153C.

5.3 The contentions of the assessee have been duly considered. The assessee contends that the AO has estimated its income in the re-assessment order and therefore the action of the AO of levying penalty is not correct. As noted earlier, there is no dispute that the assessee was not in possession of proper third party supportings of expenses of Rs. 20.05 crores for the relevant year and therefore the AO resorted to rejection of the book results and estimation of income by applying a rate of 0.75 % on the gross receipts. It is clear that the intention of the assessee was to take a risk and disclose a lesser income than what he was actually earning. In this case, the quantum of expenses claimed which do not have proper third party supportings of Rs. 20.05 crores have not been estimated but it is only the profit/income earned which has been estimated by applying a rate of 0.75 % on the gross receipts shown by the assessee. Therefore, the benefit of non levy of penalty cannot be extended to the assessee more so since huge expenses of Rs. 20.05 crores were found to be not supported by proper third party evidences. In support of the view that even on such estimated additions, concealment penalty can be levied, reliance is placed on the decision of the Hon'ble Delhi High Court in the case of Kalindi Rail Nirman Engg. Ltd. 51 taxmann.com 523 (Delhi) wherein levy of penalty on the additions made by estimating the income of the assessee by applying rate of 11% (agreed by the assessee) on the gross receipts were upheld. Therefore, the contention of the assessee that penalty is not leviable in its case since the unaccounted income has been determined by the AO on estimate basis is rejected.

5.4 The assessee has also contended that the AO has wrongly levied penalty on the difference between the income computed as per re-assessment order u/s. 143(3) rws 147 and the income as shown in the original return of income as against the difference between the income computed as per re-assessment order and the income earlier determined u/s 143(3) r.w.s. 153C. On this contention of the assessee, it is noted that in response to notice u/s 148 calling for a return of income, the assessee had informed the AO that the original return of income may be treated as a return filed in response to the notice u/s 148. Thus the AO has rightly levied penalty on the difference between the income computed as per re-assessment order u/s 143(3) r.w.s. 147 and the income as shown in the original return of income.

5.5 In view of the aforesaid discussion, no infirmity is found in the action of the AO of levying penalty of Rs. 2,32,305/- u/s 271(1)(c) for furnishing of inaccurate particulars of income. Accordingly, the grounds of appeal of the assessee are dismissed.”

5. Against the above order assessee is in appeal before us. None appeared on behalf of the assessee. Several notices were returned unserved and hence we are proceeding to dispose of the appeal by hearing learned Departmental Representative and perusing records. We note that in this case the assessee was engaging into bogus accommodation entries. The gross receipt shown at

Rs. 20.15 crores income was estimated by the Assessing Officer @ 0.75% for amount of Rs. 15,11,441/-. The assessee did not contest quantum. In penalty and appellate proceedings also it did not make convincing submission. It is noted that the issue in dispute was bogus expenses to the tune of Rs. 20.05 crores. Learned CIT(A) has relied upon the decision of Hon'ble Delhi High Court in the case of Kalindi Rail Nirman Engineering Ltd. (51 taxamnn.com 523) for sustaining levy of penalty. In our considered opinion learned CIT(A) has passed reasonable order. It does not need any interference on our part. Hence, we uphold the order of learned CIT(A).

6. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 10.2.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 10/02/2021

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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