



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**

**SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA no.6525/Mum./2019  
(Assessment Year : 2008-09)

Overseas Plastic Moulders India P. Ltd.  
(Formerly known as Overseas Plastic  
Moulders India Ltd.), Plot no.A-II  
Sadhna Industrial Estate  
Oshiwara Bridge, S.V. Road  
Jogeshwari (West) Mumbai 400 102  
PAN – AAAC09679C

..... Appellant

v/s

Income Tax Officer  
Ward-10(3)(2), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Smt. Shreekala Pardeshi

Date of Hearing – 16.08.2021

Date of Order – 29/09/2021

**ORDER**

**PER S. RIFAUH RAHMAN, A.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 30<sup>th</sup> August 2019, passed by the learned Commissioner of Income Tax (Appeals)-21, Mumbai, confirming penalty of ₹ 6,30,000, imposed under section 271(1)(c) of the Act by the Assessing Officer in respect of disallowance on account of alleged rental income.

2. When the case was called for hearing neither the appellant assessee nor any of its authorized representatives appeared before us to assist the Bench in disposing off its appeal. There is no application for adjournment either. Accordingly, the Bench

was of the view to proceed with disposing off the present appeal ex-parte qua the appellant assessee after hearing the learned Departmental Authorities and on the basis of material available on record.

3. Facts in brief:- In the present case, the assessee during the year under consideration was engaged in the business of manufacturing, process, market, distribute and sell, deal in all kinds of plastic moulded products and providing storage, warehousing, etc. The return of income was filed by the assessee on 30<sup>th</sup> September 2008, declaring total income at ₹ 77,107. The Assessing Officer noticed from the Profit & Loss Account that the assessee credited rental income at ` 30 lakh, under the head "*Other Income*" and claimed expenditure of ` 29,22,893, resulting in business income at ₹ 77,107, which was offered to tax. During the course of assessment proceedings, the assessee was asked to explain as to why rental income received should not be taxed under the head "*Income from House Property*". Further, in absence of business income during the year, the assessee company was asked to explain the justification for the allowability of expenditure debited to the Profit & Loss Account. The assessee vide letter dated 15<sup>th</sup> February 2013 submitted that the main business activity of the assessee is to carry on the business of providing storage, warehousing and the said services amount to a commercial activity and also within the main business objects of the assessee. Hence, income earned on provision of the said warehousing services would be characterized as income from business. The explanation of the assessee has been considered and found the same to be untenable by the Assessing Officer. He observed that the assessee is mainly into the business of trading of plastic moulded products. Further, the assessee has failed to establish as to why section 23 of the Act is not applicable in this case. The Assessing

Officer further was of the view that the income attributable to letting out the premises should be taxed as income from house property and only the deduction under section 24 of the Act should be allowed. It can be seen that the assessee by treating the receipt of rent as business income, the taxable income has been reduced by claiming various expenses which were otherwise not allowable as per section 24 of the Act. The Assessing Officer further relying upon certain judicial pronouncements held that it is of no significance as to whether the property held is commercial assets or otherwise. What is important / imperative is whether the property satisfies the conditions laid down in section 22 of the Act. He held that in view of the above, it would be quite justified, lawful and logical to tax the above stated receipt of rent under the head "*Income From House Property*". Accordingly, the Assessing Officer treated a sum of ` 30 lakh is treated as rental income in the hands of the assessee and income from house property is worked as under:-

<i>Rental Income</i>	₹ 30,00,000
<i>Less: Standard Deduction @ 30%</i>	₹ 9,00,000
<i>Income From House Property</i>	₹ 21,00,000

4. The Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act separately. The assessee being aggrieved by the penalty order so passed by the Assessing Officer, filed appeal before the first appellate authority for contesting the issue of penalty under section 271(1)(c) of the Act only. The quantum addition made by the Assessing Officer has not been challenged before the first appellate authority.

5. The learned CIT(A) upheld the order of the Assessing Officer levying penalty under section 271(1)(c) of the Act. Since there was no compliance from the assessee

side. He chose to dismiss the appeal for non-compliance and adjudicated on merits based on the findings of AO.

6. The learned Departmental Representative supported the order of the authorities below.

7. Considered the submissions of the learned Departmental Representative and perused the material on record. It was submitted before us that subsequently, AO has passed order giving effect to the order bearing ITA No. 4856/M/2014 dated 11.10.2017 to the ITAT 'C' Bench, Mumbai. In the above order, the AO has reduced the penalty amount to the extent of ₹5,42,937/- whereas in the present appeal, the impugned penalty amount is ₹6,30,000/-. We notice that Ld. CIT(A) has passed the order without there being any representation from assessee and without considering the fact that the Co-ordinate Bench has passed order giving certain relief to the assessee. The fact that the quantum appeal has no relevance to independently assess the applicability of penalty imposition. Therefore, we are remitting this issue back to the file of Ld. CIT(A) to adjudicate the issue afresh after giving proper opportunity of being heard to the assessee. Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 29/09/2021.**

Sd/  
SAKTIJIT DEY  
JUDICIAL MEMBER

Sd/-  
S. RIFAUH RAHMAN  
ACCOUNTANT MEMBER

**MUMBAI, DATED: 29/09/2021**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Rahul Sharma, Sr. P.S.*

By Order

Assistant Registrar  
ITAT, Mumbai