

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI**

SHRI SANJAY GARG, JUDICIAL MEMBER

**ITA No.1012/Del/2020
Assessment Year : 2012-13**

M/s Boutique Hotels India Private Limited, B 106, Gujranwala Town Part 1, Opposite Model Town 2, New Delhi-110009	vs	ACIT, Circle-5(1), C.R. Building, ITO, I.P. Estate, New Delhi-110002
PAN-AAACH2439K		
APPELLANT		RESPONDENT

Appellant by	Sh. Rohit Golecha, CA
Respondent by	Sh. Sanjay Kumar, Sr. DR
Date of Hearing	23.06.2022
Date of Pronouncement	23.06.2022

ORDER

This present appeal has been preferred by the assessee against the order dated 23.07.2019 of the Ld. Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred to as CIT(A)] pertaining to AY 2012-13.

2. The assessee in this case has agitated the levy of penalty u/s 271(1)(c) of the Income Tax Act.

3. There is delay of 16 days in filing of the appeal. A separate application has been filed for condonation of delay. Considering the facts pleaded in the condonation application of the assessee, the delay is condoned.

4. The brief facts of the case are that the assessee during the year claimed the Revenue expenditure of Rs.81,20,388/- on account of building

repair and maintenance expenses, out of which the Assessing Officer disallowed a sum of Rs.45,09,274/- holding the same as capital in nature. The Assessing Officer also initiated the penalty proceeding on account of aforesaid disallowance and imposed the penalty of Rs.13,93,365/-.

5. The Ld. CIT(A) confirmed the penalty so levied by the Assessing Officer.

6. The assessee, thus, come in appeal before this Tribunal.

7. I have heard the rival contention and gone through the record. Apparently, this case is neither of concealment of income nor furnishing of inaccurate particulars of income. The assessee in its bona fide belief had claimed the expenditure as revenue expenditure, however, the Assessing Officer finding some of the items as of enduring benefit held that the expenditure on those items was capital in nature. However, the facts on the file suggests that the aforesaid disallowance made by the Assessing Officer is not on account of furnishing of inaccurate particulars of income or concealment of income. Therefore, the impugned penalty levied by the Assessing Officer is not justified and the same is hereby quashed.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 23.06.2022.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Delhi;
Dated: 23/06/2022.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI