

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7689/Del/2019  
Asstt. Year: 2007-08

M/s. RMS CLUB & RESORTS PVT. LTD. C-691, New Friends Colony, New Delhi. PAN AACCR3773Q (Appellant)	Vs.	JCIT, Central Circle – 28, New Delhi.  (Respondent)
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Assessee by:	None
Department by :	Shri K.K. Mishra, Sr. DR
Date of Hearing	15.02.2023
Date of pronouncement	15.03.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 17.07.2019 of the Ld. Commissioner of Income Tax (Appeals)- 29, New Delhi (**"CIT(A)"**) whereby he confirmed the penalty of Rs. 15,25,220/- imposed by the Ld. Assessing Officer (**"AO"**) under section 271(1)(c) of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year (**"AY"**) 2007-08.

2. It is a search case. Search was conducted under section 132 of the Act on 28.09.2010 on Triveni Group. Search warrant under section 132 (1) of the Act was issued and executed in the name of the assessee also as it belonged to the said group. Notice under section 153A of the Act was issued on 19.05.2011. Notice under section 142(1) of the Act was issued on 12.09.2012. In response the assessee filed letter dated 12.03.2013 along

with a copy of return for AY 2007-08 filed under section 139(1) with a request that this return may be accepted as the ITR filed in response to the notice under section 153A declaring an income of Rs. Nil. Notice under section 143(2) and 142(1) along with detailed questionnaire were issued on 15.03.2013. During assessment proceedings the assessee filed the details as called for. The Ld. AO found that the assessee has filed audited balance sheet as on 31.03.2007 and as per P&L account the profit before tax is shown at Rs. 49,35,988/-. According to the Ld. AO, the assessee has filed re-casted financial statement as on 31.03.2007 which are not audited and no clarification in support of re-casted accounts are filed. He therefore completed the assessment on the basis of audited accounts on total income of Rs. 49,35,990/- on 25.03.2013 under section 153A r.w. section 143(3) of the Act and initiated penalty proceedings under section 271(1)(c) of the Act.

3. During penalty proceedings the assessee vide letter dated 26.04.2013 explained that the 100% holding company had shown sales to the assessee company which was reversed and the same is duly reflected in the re-casted financial statement of holding company also. It was further explained that the said sales by the holding company were made for showing higher sales in the consolidated financial statements for the purpose of listing of the holding company and therefore it was book sale only on which no profit could be presumed to have been earned and that the assessee has right to compute its true and real income while filing its ITR.

4. The explanation offered by the assessee was not acceptable to the Ld. AO who imposed the impugned penalty of Rs. 15,25,220/- under section 271(1)(c) of the Act.

5. The assessee filed appeal before the Ld. CIT(A). Notices of hearing issued by the Ld. CIT(A) were not complied with. He, therefore, decided the appeal ex-parte sustaining the impugned penalty against which the assessee is in appeal before the Tribunal.

6. Hearing was fixed for 27.06.2022. None attended for the assessee. On written request of the assessee hearing fixed for 20.09.2022 was adjourned to 05.12.2022 but on 05.12.2022 also none was present for the assessee. Hearing was again fixed for 15.02.2022 but on that day also none represented the assessee, though on all the above dates, the Ld. DR represented the Department. We, therefore, proceeded to decide the appeal ex-parte on merits after hearing the Ld. DR.

7. We have perused the records and deliberated whether on the facts and in the circumstances of the assessee's case, penalty under section 271(1)(c) is at all exigible. It is revealed from the assessment order that the assessee company has e-filed its return for AY 2007-08 on 30.10.2007 declaring an income of Rs. 49,13,600/-. Search under section 132 of the Act was conducted on the assessee along with the search on Triveni Group on 28.09.2010 to which the assessee belonged. In response to notice under section 153A the assessee filed return declaring nil income. During assessment proceedings as also penalty proceedings the assessee explained as to why nil return was filed in response to notice under section 153A as against the income of Rs. 49,13,600/- e-filed on 30.10.2007 under section 139(1) of the Act. The explanation of the assessee has not been found to be false. It has been discarded without assigning any valid reason. Search under section 132(1) of the Act upon the assessee did not result in discovery of any undisclosed income. There is no whisper anywhere in the records that any incriminating material was found and seized in the case of the assessee. The assessment under section 153A r.w. section 143(3) has been made on the basis of the profit disclosed in the audited P&L account on the basis of which the assessee had e-filed its return under section 139(1) of the Act on 30.10.2007 ignoring completely the nil return filed in response to notice issued under section 153A of the Act. There is absolutely no material in the records to indicate that the assessee either concealed any particulars of income or furnished inaccurate particular of such income. On the contrary, the assessee had disclosed all the particulars in his return as also in the return filed in response to notice under section 153A of the Act. We

have therefore, reached the conclusion that the impugned penalty levied by the Ld. AO and sustained by the Ld. CIT(A) deserves to be quashed. Accordingly, the impugned penalty is deleted.

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

**Order pronounced in the open court on 15<sup>th</sup> March, 2023.**

sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

sd/-  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 15/03/2023

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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