

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.1723/Mum/2024
Assessment Year: 2012-13**

M/s. Maaran Multitrading Private Limited		Addl/Joint/Deputy/ACIT /ITO, Ward-7(2)(1), Mumbai.
5A Jindal Mansion, Dr. G. Deshmukh Marg, Mumbai-400026.	Vs.	
PAN: AAHCM 1425 D		
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Vinita Shah
Revenue by : Shri Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 25.06.2024
Date of Pronouncement : 30.07.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 12.02.2024 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

"i. On the facts and circumstances of the case as well as in law, the ld. CIT(A) has erred in confirming the action of ld. Assessing officer in imposing a penalty of Rs. 1,10,768/- u/s 271(1)(c) of the Income Tax Act, 1961 on the alleged plea that the appellant has furnished inaccurate particulars of income, without considering the facts and circumstances of the case.

ii. On the facts and circumstances of the case as well as in law, the ld. CIT(A) has erred in confirming the action of ld. Assessing officer in imposing a penalty of Rs. 1,10,768/- u/s 271(1)(c) of the Income Tax Act, 1961 on the issue of addition made on account of disallowance of

professional fees of Rs. 3,58,475/- without considering the facts and circumstances of the case.

iii. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

2. Fact in brief is that assessment u/s 143(3) r.w.s. 147 of the Act was finalized on 16.12.2019 and total income of the assessee was assessed at Rs. 5,24,720/-. During the course of reassessment, the assessing officer has disallowed the claim of professional fees of Rs. 3,58,475/- as revenue expenditure on the ground that professional fees paid for acquiring tenancy rights was a capital asset. The assessing officer has also initiated penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. The assessee has made payment of professional fees of Rs. 3,58,475/- in relation to purchase of tenancy rights for a consideration of Rs. 17,86,13,920/-. During the course of appellate proceedings, the assessee submitted that it had submitted all the particulars including audited balance sheet and P & L A/c along with schedule of expenses and assessee had never concealed any particulars of income. The assessee further submitted that genuineness of the expenditure was not questioned and it was only the case of treating the same as revenue or capital expenditure and because of smallness of the amount, assessee had not contested the quantum of addition. The assessee also submitted that there was no case of furnishing any inaccurate particulars regarding income of the assessee. The AO has not agreed with the submission of the assessee and levied minimum penalty of Rs. 1,10,768/- u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. As discussed supra in this order during the course of assessment, the assessing officer has disallowed the claim of revenue expenditure of amount of Rs. 3,58,475/- as professional fess holding that same was a capital expenditure and also levied penalty of Rs. 1,10,768/- vide order u/s 271(1)(c) of the Act on 17.03.2022 for furnishing inaccurate particulars of income.

5. After perusal of the material on record, it is noticed that assessee has disclosed all the expenses in the ITR-6 filed and in Part A of the return filed. The assessee has listed all the expenses as items of Profit & Loss A/c including professional fees under the head of other expenses. Before us, the ld. Counsel referred the various judicial pronouncements on the proposition that mere making of claim of expenses will not amount to furnishing of inaccurate particulars of income. In this regard, the ld. Counsel has referred the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Petrochemicals P Ltd. (2010) 189 Taxman 322 (SC). The ld. Counsel has also referred the decision of Hon'ble High Court of Punjab & Haryana in the case of CIT vs Amtek Auto Ltd. 352 ITR 394 wherein it is held that merely because assessee claimed expenditure as revenue which held by the AO as capital in that case penalty for concealment could not be imposed where assessee disclosed nature of transaction.

6. We have also perused the decision of Mumbai ITAT in the case of Dresser-Rand India (P) Ltd. vs. Deputy CIT 24 ITR(T) 610 holding that when genuineness of expenses was not disputed by assessing officer and merely disallowance of expenses treating same as capital in nature could not be the basis for imposition of penalty u/s 271(1)(c) of the Act. It is evident in the case of the assessee that it has furnished all the relevant details and the genuineness of the expenditure was not

questioned and only the claim of the nature of expenditure was questioned by the assessing officer.

7. Following the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Petrochemicals P Ltd. as referred above, we consider that merely making of claim of revenue expenditure in the case of the assessee will not amount to furnishing of inaccurate particulars of income therefore, we consider that decision of ld. CIT(A) in sustaining the penalty is not justified. Accordingly, the ground of appeal filed by the assessee are allowed.

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

Order pronounced in the open court on 30.07.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 30.07.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai