

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 991/KOL/2024
Assessment Year: 2017-2018**

***Multanmull Kishanlal & Sons,.....Appellant
C/o. Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata-700069
[PAN:AAFFM7187F]***

-Vs.-

***Assistant Commissioner of Income Tax,.....Respondent
Circle-40, Kolkata
3, Government Place,
Kolkata-700001***

Appearances by:

*Shri Siddharth Agarwal, Advocate, appeared on behalf
of the assessee*

*Shri Altaf Hussain, Addl. CIT, Sr. DR, appeared on
behalf of the Revenue*

**Date of concluding the hearing: August 1st , 2024
Date of pronouncing the order: August 05, 2024**

O R D E R

Per Sanjay Garg, Judicial Member:-

The present appeal has been preferred by the assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 4th April, 2024 for the assessment year 2017-18.

2. The assessee in this appeal has agitated against the confirmation of penalty of Rs.96,902/- imposed by the Id. Assessing Officer under section 270A of the Income Tax Act on account of misreporting of the income.

3. At the outset, Id. Counsel for the assessee has invited our attention to the assessment order dated 27.12.2019 passed by the Id. Assessing Officer under section 143(3) of the Income Tax Act. A perusal of the said assessment order reveals that the assessee is engaged in the business of housing development etc. The Id. Assessing Officer noted that the assessee had shown high Closing Stock in its Balance-sheet for the Financial Year 2016-17 relevant to Assessment Year 2017-18. A show cause notice was issued by the Id. Assessing Officer requiring the assessee to furnish explanation as to why the provision of deemed rent be not applied in the case of assessee. The assessee replied that Closing Stock as on 31.03.2017 was almost 10% of the total sale of F.Ys. 2015-16 and 2016-17 and

since there was agreement of sale in respect of flats shown in the Closing Stock, therefore, the provision of deemed rent was not applicable in the case of assessee. However, the ld. Assessing Officer did not agree with the aforesaid contention and made the addition of Rs.1,40,000/- on account of deemed rent in respect of the closing stock of flats. The ld. Assessing Officer thereafter levied the impugned penalty observing that the assessee has misreported its income, which has been confirmed by the ld. CIT(Appeals).

4. We have heard the rival contentions and gone through the material available on record. In our view, this is not a case of misreporting of income. Since there was agreement to sale already executed by the assessee in respect of the flats shown as Closing Stock and, therefore, the assessee was of the view that the provisions relating to deemed rent were not applicable. However, the ld. Assessing Officer held otherwise. Since the addition was very small, the assessee did not carry the matter further in appeal. However, the above facts show that this was not a case of misreporting of income, rather it was a case of mere difference of opinion. The assessee was of the bonafide view that the provision of deemed rent as per provision of section 23 of the Income Tax Act was not applicable to the income of the assessee. However, the ld. Assessing Officer applied the said provision. However, in our view, it is not

a case of levy of penalty under section 270A of the Income Tax Act and the same is accordingly deleted.

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

Order pronounced in the open Court on 05/08/2024.

Sd/-

**(Sanjay Awasthi)
Accountant Member**

Sd/-

**(Sanjay Garg)
Judicial Member**

Kolkata, the 5th day of August, 2024

*Copies to :(1) Multanmull Kishanlal & Sons,
C/o. Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata-700069*

*(2) Assistant Commissioner of Income Tax,
Circle-40, Kolkata
3, Government Place, Kolkata-700001*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT- , Kolkata

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.