

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA no.4376/Mum./2012
(Assessment Year: 2002-03)

Makrupa Chemicals P. Ltd.,
New India Centre, 5th Floor,
17 Cooperage Road, Mumbai 400039.
PAN AAACM2746A

..... Appellant

v/s

ITO 1(2)(3)
Mumbai 400020

..... Respondent

Assessee by : None

Revenue by : Shri. Suman Kumar

Date of Hearing -24.04.2017

Date of Order -26.04.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of Ld. CIT-A dated 03.05.2012 and pertains to assessment year 2002-03.

2. The grounds of appeal read as under:

1. *The Commissioner Of Income Tax (Appeals) - 2, Mumbai, [hereinafter referred to as CIT(A)] erred in confirming levy of penalty of Rs.5,15,2701- U/S 271(1)(c) of the I.T. being 100% of tax sought to be evaded.*

Your Appellant submits that on the facts and circumstances of the case there was neither any concealment of income nor furnishing of any inaccurate particulars of income and hence no penalty was leviable u/s. 271 (1)(c) of the I.T. Act. The Appellant submits that the penalty order passed by the AO and confirmed by the CIT(A) is bad in law and contrary to the provision of the Act and shall be vacated.

The Appellant craves leave, to add, to alter or to amend the aforesaid grounds of appeal.

3. Brief facts of the case leading to the levy of penalty in this case are as under;

Briefly, the case of the Assessing Officer is that the appellant company is the owner of a Flat No.51 in National Centre for Performing Arts (NCPA Society) Building situated in Nariman Point, Mumbai which is also a prime location in Mumbai. The appellant company had let out this flat to M/s UBS Warburg on monthly rent of Rs.10,000/- and had taken interest free deposit of Rs.3.75 crores from the tenant. The tenant foreign company had an authorized capital of more than Rs. 1 crore, therefore, it was not covered under the Mumbai Rent Control Act and consequently, the provisions of Standard Rent were not applicable in this case. The company had

declared its rental income of Rs.1,20,000/- under the head "Income from House Property". The Assessing Officer was not satisfied on the meagre rent of Rs. 10,000/- per month declared by the appellant company. Therefore, he made necessary enquiries in the same building and found that British High Commissioner was paying rent of Rs. 20.40 lacs p.a. for unfurnished flat in the same building and therefore, he made an addition by adopting rent of 20.40 lacs p.a. in the case of the appellant firm besides increasing interest of Rs. 45 lacs as a interest on interest free deposits. The issue was contested before the CIT(A) and also before the Hon'ble ITAT. The Hon'ble ITAT had set aside the assessment and annual letting out value of the property was determined by the Assessing Officer at Rs.22,19,842/- vide his order dated 15/10/2009. Since the appellant had declared income from house property by taking monthly rent of Rs. 10,000/- p.m., it was apparent that appellant company had furnished inaccurate particulars of income. Accordingly, a penalty notice was issued and after giving a reasonable opportunity of being heard, the Assessing Officer has imposed a penalty of Rs.5,15,270/- u/s. 271(1) (c) of the Income-tax Act for furnishing inaccurate particulars of- in-come on the appellant company.

4. Upon assessee's appeal Ld. CIT-A confirmed the assessing officer's action as under:

"After examining the facts and circumstances of the case, I find that the Assessing Officer has correctly determined the Annual Letting out Value(ALV) of the flat No. 51 located at NCPA, Nariman Point, Mumbai at Rs. 22,19,843/-. The ALV under section 23(1)(a) or the actual rent received, whichever is higher, is to be considered for the purpose of taxation under the head "Income from House Property". The Hon'ble ITAT, Mumbai in appellant's own case 108 ITD 95 (Mum) dated 5/9/2006 has held that (i) ALV would be the sum at which the property may be reasonably let out by a willing lessor to a willing lessee uninfluenced by any extraneous circumstances, (ii) an inflated or deflated rent based on extraneous consideration may take it out of the bounds of reasonableness, (iii) actual rent received, in normal circumstances, would be a reliable evidence unless the rent is inflated/deflated by reason of extraneous consideration, (iv) such ALV, however, cannot exceed the standard rent as per the Rent Control Legislation applicable to the property, (v) if standard rent has not been fixed by the Rent Controller, then it is the duty of the Assessing Officer to determine the standard rent as per the provisions of rent control enactment, and (vi) the standard rent is the upper limit, and if the fair rent is less than the

standard rent, then it is the fair rent which shall be taken as ALV not the standard rent.

In the present case, the appellant company has deliberately shown very nominal rent of Rs. 10,000/- p.m. knowing fully well that the provisions of Maharashtra Rent Control Act, 1999 does not apply in this case because authorised capital of the tenant i.e. Swiss Bank Corporation was more than Rs. 1 crore. Still it insisted before the Assessing Officer that the provisions of standard rent may be applied in the case of the appellant and rent received for such prime flat at the rate of Rs. 10,000/- p.m. was a reasonable rent and which was more than the ALV. The appellant company has tried in vain to show its income from house property at ridiculously low figures and has furnished inaccurate particulars of income in its return of income. It was due to the efforts of the Assessing Officer that correct income of the appellant company under the head "House Property" after allowing 30% deduction u/s. 24 towards the repairs, was finally assessed at Rs.14,43,334/-. In view of the above, it is not a case of a differing perception or lack of clarity of law as argued by the authorized representative. Since the appellant company has furnished inaccurate particulars of its total income, therefore, I find no reason to interfere with the penalty order of the Assessing Officer. The appellant company also does not have any

reasonable cause for committing such default. Consequently, it is a fit case for imposition of penalty u/s. 271(1)(C) of the Income-tax Act and therefore, the penalty is confirmed in this case.

5. Against the above order assessee is in appeal before us. We have heard the learned departmental representative. None appeared on behalf of the assessee. It is noted that on the past several occasions none has appeared on behalf of the assessee when the appeal was fixed for hearing. Accordingly we proceed to adjudicate the issue upon hearing the learned departmental representative and perusing the records.

6. We find that assessee in this case has offered rent at the figure of Rs.1,20,000 per annum, against that determined by the assessing officer at Rs.22,19,842. This is subsequent to the remand by the ITAT. Initially also assessing officer had computed the rent at Rs.20.40 lacks per annum, which the learned CIT-A had deleted. Thus it is clear that in the original as well as subsequent order as per remand, rent determined was hugely disproportionate the meagre sum of Rs.1,20,000 offered by the assessee. The facts and circumstances clearly indicate furnishing of inaccurate particulars of income by the assessee. Assessee had clearly failed to offer the correct income. It cannot be said that there was any possible view, that the sum offered by the assessee was reasonable. Hence we do

not find any infirmity in the order of the Ld. CIT-A. Accordingly we affirm the same.

In the result this appeal by the assessee stands allowed.

Order pronounced in the Open Court on 26.04.2017

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 26.04.2017

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.

By Order

Nishant Verma

Sr. Private Secretary

(Dy./Asstt.Registrar)

ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	24.04.2017	}	Sr.PS
2.	Draft placed before author	25.04.2017		Sr.PS
3.	Draft proposed & placed before the second member	--		JM/AM
4.	Draft discussed/approved by Second Member	--		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	25.04.2017	}	Sr.PS
6.	Date of pronouncement	26.04.2017		Sr.PS
7.	File sent to the Bench Clerk	.04.2017	}	Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			