

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.5476/Mum/2015

(निर्धारण वर्ष / Assessment Year :2006-07)

The Great Eastern Shipping Company Ltd., C/o Kalyaniwalla and Mistry, Army and Navi Building, 148 M G Road, Fort, Mumbai-400001	बनाम/ Vs.	The DY.Commissioner of Income Tax –circle 5(3), Room No.573,5 th Floor, Ayakar Bhavan,M.K.Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACT1565C

अपीलार्थी ओर से / Appellant by:	Shri Jitendra Jain
प्रत्यर्थी की ओर से/Respondent by	Shri H M Wanare

सुनवाई की तारीख / Date of Hearing : 21.7.2016

घोषणा की तारीख /Date of Pronouncement : 08.08 .2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and is directed against the order of the Ld. CIT(A)-10, Mumbai dt 25.8.2015 pertaining to A.Y.2006-07.

2. Only issue raised in all the grounds of appeal is against the confirmation of penalty of Rs.58,132/- by the ld.CIT(A) as against Rs.1,74,396/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961.
3. Facts of the case are that the assessment was completed u/s 143(3) of the Act by an order dated 31.12.2008 by making various additions including the addition of Rs.1,89,975/- being the disallowance of brokerage

and transfer fee on sale of residential flat which was confirmed in the quantum appeal by the Id.CIT(A) and ultimately the AO imposed penalty on the said amount of disallowance to the tune of Rs.1,74,396/- being 300% of the tax sought to be evaded. In appeal, the Id.CIT(A) partly allowed the appeal of the assessee by holding that the quantum on which the penalty was imposed was confirmed by FAA as well as by the ITAT by upholding the action of the AO and the First Appellate Authority by invocation of provisions of section 271(1)(c) of the Act and by relying on the decision of Hon'ble Delhi High Court in the case of Zoom Communications P Ltd (2010) 191 Taxmann 179 and distinguishing the decision of the Hon'ble Supreme Court in the case of Reliance Petroproduct P Ltd reported in (2010) 189 Taxmann 322 (SC) reduced the penalty to 100% of the tax sought to be evaded i.e. Rs.58,132/-. The assessee still aggrieved by the order of Id.CIT(A), filed appeal before this Tribunal.

4. The Id. AR vehemently brought to our notice the observations of the Id. CIT(A) that the addition was upheld by the ITAT was factually incorrect as quantum was not confirmed by the ITAT but the ground as taken up as regard to Rs.189,975/- was not pressed. In order to corroborate the affirmation made by the Id.AR, he placed before us a copy of the order passed by the ITAT in quantum appeal in ITA No.4507/Mum/2011 (AY-2006-07) dated 14.9.2012. The Id. AR also invited our attention to page 13 of the said judgment, wherein it has clearly been stated that Ground No.1 as regard

contribution towards the major repair funds aggregating to Rs.1,89,975/- was not pressed and dismissed as not pressed. The Id. AR also submitted before us that the contribution towards repairs funds was allowable expenses and the action of the AO and the Id.CIT(A) was wrong and against the spirit of law and therefore, the penalty should not be imposed on the said claim of the assessee as it was wholly and exclusively incurred in connection with transfer /sale of residential flat and without the payment of such the sale could not have been happened. In defence of his argument, the Id. AR strongly placed reliance on the decision of the Co-ordinate Bench of the Tribunal in the case of CIT V/s Madhur I Techchandaney reported in 93 ITD 65 (Mum). The Id. AR prayed that the penalty has been levied by invoking the provisions of section 271(1)(c) in wrong manner as the bonafide claim of the assessee was rejected and finally, in view of the decision referred to above, the Id. AR prayed that the penalty be deleted by allowing the appeal of the assessee.

5. On the contrary, the Id. DR strongly opposed the plea putforth by the Id.AR and relied on the decisions of lower authorities.

6. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. It is clear from the facts available before us that the contribution to the repair fund of the society was made by the assessee in which he owned the flat and the flat was sold and without such

payment, the transfer of said flat could not have been materialized. Therefore, the expenditure incurred for the transfer/sale of flat was wholly and exclusively for the purpose of sale of flat. Therefore, this expenditure is allowable. We further observe the decision of the Id.CIT(A) is wrong and against the facts on record that both the authorities have sustained the addition in quantum appeal, whereas the facts are different. The Id.CIT(A) confirmed the addition whereas the ground taken up for challenging before the Tribunal the said addition was not pressed before the Tribunal which was duly stated by the Tribunal in para 13 of the judgment. Moreover, in the case of Madhur I Techchandaney (supra) it has been held that if any amount paid for repairs funds contribution made to the repair fund is allowable expenses as it was incurred by the assessee wholly and exclusively in connection with such transfer and the amount should be deducted while computing the income from capital gains in accordance with section 48(1) of the Act. We therefore are of the opinion that the facts of the assessee's case are fully covered in favour of the assessee by the Decision of the Hon'ble Apex Court in the case of Reliance Petro Produce P Ltd (supra) as a bonafide and legitimate claim made by the assessee was rejected by the revenue. Moreover, the issue of allowability of contribution to repairs fund was settled by the decision of the co-ordinate Bench of the Tribunal. We, therefore, following the ratio laid down in the above decisions set aside the order of the Id. CIT(A) and direct the AO to delete the penalty.

7. In the result the appeal of the assessee is allowed.

The above order was pronounced in the open court on 08th Aug, 2016.

घोषणा खुले न्यायालय में दिनांक: 8th 2016 को की गई ।

Sd

(JOGINDER SINGH)
Judicial Member

sd

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 8th Aug, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai