

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN (AM) & SHRI RAM LAL NEGI (JM)

I.T.A. NOS. 2751 TO 2753/MUM/2012
(Assessment Years 2002-2003 to 2004-05)

M/s. Roselin Mercantile Limited, Vithal Sadan, 5 th floor, 342, Kalbadevi Road, Mumbai 400 002.	Vs.	ITO – 4(3)(2), Mumbai
(Appellant)	..	(Respondent)

PAN No.AABCR4977K

Assessee by :	Ms. Aarti Sathe
Department by :	Shri B.S. Bist (Sr. DR)
Date of Hearing :	29.02.2016
Date of Pronouncement :	04.03.2016

ORDER

PER B.R. BASKARAN, AM :-

All these appeals filed by the assessee are directed against the orders passed by Ld CIT(A)-8, Mumbai for assessment years 2002-03, 2003-04 and 2004-05 confirming the penalty levied u/s 271(1)(c) of the Act.

2. We heard the parties and perused the record. The facts are that the assessee received rental income from a cluster of tenements and declared the same under the head Income from House property. The

assessee appears to have incurred expenses for providing common amenities and the expenditure incurred thereon was deducted from the rental income at source. The assessee also paid "Cess" to Government, but claimed the same as deduction u/s 24. Both the claims were disallowed by the AO in all the three years and it was also confirmed by the Tribunal. The assessing officer levied penalty u/s 271(1)(c) of the Act for concealment of income in respect of both the disallowances referred above and the Ld CIT(A) also confirmed the same in all the three years. Aggrieved, the assessee has filed these appeals before us.

3. The Ld A.R placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Reliance Petro Products (322 ITR 158) to contend that mere disallowance of claim made by the assessee would not amount to furnishing of inaccurate particulars of income. However, it was pointed out to the Ld A.R that the assessing officer has levied the penalty on the ground that the assessee has concealed particulars of income and accordingly the Ld A.R was asked as to whether the assessee has filed any explanation to the assessing officer during the course of penalty proceedings in terms of Explanation 1 to sec. 271(1)(c) of the Act. The Ld A.R submitted that the assessee has not concealed any particulars of income, since the AO has only rejected the claim for deduction of expenses. She further submitted that the claim so made by the assessee is supported by the decision rendered by the Tribunal in Shri Saif Ali Khan (ITA No.1653/Mum/2009) and Universal Textile Water Proof Co. (India) (2008)(20 SOT 0275). However, the Ld A.R fairly admitted that the assessee did not furnish any explanation either before the AO or before the Ld CIT(A).

4. On the contrary, the Ld D.R submitted that the Tribunal has confirmed the disallowances after considering both the decisions relied upon by Ld A.R. He further submitted that the assessee has failed to offer any explanation as required u/s 271(1)(C) of the Act read with Explanation 1, which is mandatory as per the decision of Hon'ble Supreme Court rendered in the case of MAK Data Ltd (2014)(1 SCC 674).

5. In the rejoinder, the Ld A.R submitted that the assessee had, in fact, sought time to file explanations, but the assessing officer has passed the impugned penalty orders without granting time. Accordingly she prayed that the assessee should be provided with an opportunity to furnish explanations, since the assessee has not concealed any particulars of income.

6. Having heard rival submissions, we are of the view that, in the interest of natural justice, the assessee should be provided with one more opportunity to furnish the explanations with regard to the penalty levied in all the three years. Accordingly we set aside the orders of Ld CIT(A) passed for the years under consideration and restore them to the file of the assessing officer with the direction to examine them afresh in all the three years after duly considering the explanations that may be furnished by the assessee. We also direct the assessee to furnish the explanations before the assessing officer within two weeks from the date of receipt of this order and the assessing officer shall dispose of these matters expeditiously, after hearing the assessee.

7. In the result, all the appeals filed by the assessee are treated as allowed for statistical purposes.

Order has been pronounced in the Open Court on 04.03.2016.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 04/03/2016

SSL

Copy of the Order forwarded to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A)
- 4) CIT
- 5) DR, ITAT, Mumbai
- 6) Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai