

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

BEFORE SHRI R.C. SHARMA(AM) AND SHRI SANDEEP GOSAIN (JM)

**ITA No. 191/MUM/2014
Assessment Year: 2007-08**

DCIT (OSD) 2 (3)
R.No. 552, Aayakar Bhavan
M.K. Road,
Mumbai -400020

Vs. NRB Bearings Ltd.
Dhannur, 15 Sir, P.M. Rd. Fort
Mumbai- 400001

PAN No. AAACN3479P

(Appellant)

(Respondent)

Assessee By: Shri. Mayur R. Makadia
Revenue By: Shri. Randhir Gupta

Date of Hearing : 27/07/2016
Date of pronouncement : 09/09/2016

ORDER

PER SANDEEP GOSAIN, JM :

This appeal by Revenue is arising out of the order of Ld. CIT(A)-5, Mumbai in Appeal No. IT-45/12-13/54/13-14, dt. 30/10/201. Assessment was framed by ITO, Mumbai for the AY 2007-08, vide his order dt. 29/12/2009 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. In this Revenue has raised the following grounds :

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty u/s. 271(1)(c) of the IT Act of Rs. 16,04,400/-, in respect of addition of Annual Letting Value (ALV), without appreciating that by offering ALV not in conformity with provisions of section 23(1) of the IT Act, 1961,

the assessee had indeed filed inaccurate particulars of its income within the meaning of section 271(1)(c) of the IT Act."

2. *" On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty u/s. 271(1)(c) of the IT Act of Rs. 16,04,400/-, in respect of addition of Annual Letting Value (ALV), without appreciating that the explanation furnished by the assessee that the security deposit was utilized for repaying loans and thereby reducing interest costs, which would have otherwise been an allowable business expenditure, was not bonafide as the decision to replay business loans was dictated by business expediency and had nothing to do with determination of its house property income."*

3. *" On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty u/s. 271(1)(c) of the IT Act, without appreciating that for levying penalty u/s. 271(1)(c) of the IT Act 'mens-rea' was not applicable in view of explanation 1 to the section 271(1)(c) of the IT Act, 1961."*

3. Brief facts of the case are that the assessee filed its return of income on 30/10/2007 declaring income of Rs. 54,55,17,803/-. The income was determining under section 143(3) at Rs. 61,43,30,998/- after making certain additions. One of the addition made was enhancement in Annual Letting Value (ALV) at Rs. 53,48,000/- in the assessment order. The assessee went in appeal before first appellate authority CIT(A) who had dismissed the appeal and upheld the order of AO. Subsequently penalty proceeding were initiated and after seeking reply of the assessee, penalty order under section 271(1)(c) of the Act, 1961 was passed by the AO against the assessee by imposing penalty of Rs. 16,04,400/-. Against the order of imposing of penalty the assessee preferred appeal before the Ld. CIT(A) and the Ld. CIT after considering the case of both the parties had deleted the entire penalty.

4. Aggrieved by the order of Ld. CIT(A) the Revenue has preferred appeal before us on the ground mentioned herein above.

5. At the very outset Ld. AR submitted before us that the penalty proceedings were initiated on account of addition of ALV. However in the quantum appeal filed by the assessee, the Hon'ble ITAT, Mumbai 'G' Bench in I.T. Act No. 672/Mum/2011 and ITA No. 1982/Mum/2011 for AY 2007-08 had restored the matter to the AO to determine the ALV as per the guidelines proposed as laid down by the jurisdictional High Court. In this respect our attention was drawn towards para 9 of the order passed by Hon'ble ITAT which is reproduced herein below:

9. After considering the rival submissions and on perusal of the impugned orders we find that the AO as well as CIT(A) have drawn adverse inference for enhancing the ALV, mainly on the ground that, firstly, the assessee has taken interest free deposit from the tenants and if such deposits would not have been taken, then the rental value would have been more; and secondly, the market rate at which the flat was rented to M/s Futura Polyester Ltd. was much higher than the rent received from assessee from its other tenants i.e. Centurion Bank and Johnson & Johnson. Now the jurisdictional High Court has discussed similar kind of cases in detail in case of Tip Top Typography and have laid down very detailed proposition on the determination of ALV. The Hon'ble High Court have accepted the contention of the assessee that, municipal valuation rate for determining the ALV is also an accepted method of valuation, which on the facts and circumstances of the case can be applied. They have even discussed whether, any adverse effect has to be drawn in the cases where interest free deposits have been accepted. Thus, in wake of the said judgment of Hon'ble Bombay High Court we are of the opinion that the matter should be restored back to the file of the AO to determine the ALV as per the guidelines proposed and laid down by the jurisdictional High Court and after giving due opportunity to the assessee to explain its case. Accordingly, ground No. 2 is treated as partly allowed for statistical purposes.

6. On the other hand Ld. DR admitted the said legal factual position.

7. Considering the aforementioned proposition we hold that when once the issue of determining the ALV has already been restored back to the file of AO,

therefore penalty proceeding on the basis of original assessment order is not sustainable and therefore we set aside the same however while setting aside the same we also restore this case back to the file of AO to pass appropriate order afresh after determining the issue of ALV. Therefore this ground of appeal is treated as partly allowed for statistical purposes.

8. In the result, appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 09/09/2016.

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 09/09/2016.
AG (On Tour)

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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