

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य केसमक्ष
BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER, AND
SHRI G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2778/Mds/2016
निर्धारण वर्ष / Assessment Year : 2007-08

The Income Tax Officer, Non-Corporate Ward – 2(3), Chennai – 34	v.	M/s. R P Usha Enterprises, No.39, Habibullah Road, T. Nagar, Chennai – 600 017.
		PAN: AAIFR0955R
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Shri Shiva Srinivas, JCIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri V.S. Jayakumar, Advocate

सुनवाई की तारीख/Date of Hearing	:	09.03.2017
घोषणा की तारीख/Date of Pronouncement	:	22.03.2017

आदेश / ORDER

PER A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER:

This appeal is filed by the Revenue aggrieved by the order of the Ld. Commissioner of Income Tax (Appeals) in ITA No. 337/CIT(A)-2/2013-14 dated 30.06.2016 passed u/s. 271(1)(c) of the Act.

2. The Revenue has raised several grounds in its appeal, however the crux of the issue is that the Ld. CIT(A) has erred in

deleting the penalty of Rs.10,20,269/- levied u/s. 271(1)(c) of the Act by the Ld. AO for wrongly claiming the “income of house property” under the head “income from business”.

3. The brief facts of the case are that the assessee is a firm filed its return of income for the assessment year 2007-08 on 31.10.2007 admitting Nil income. Initially the return was processed u/s.143(1) of the Act and thereafter the case was selected for scrutiny through CASS and finally assessment was completed u/s.143(3) of the Act on 31.12.2009, wherein it was revealed that the assessee had disclosed its ‘income from house property’ being the rent received towards leasing of its factory premises for warehouse purposes as ‘business income’. It was observed by the Ld. AO that the assessee had split the total lease amount as rent for amenities and rent for lease in order to split the income under two heads of income.

4. On appeal, the Ld. CIT(A) after considering that the case of the appellant deleted the penalty levied by the Ld. AO by holding that the provisions of Section 271(1)(c) of the Act is not applicable since there has been no actual concealment of income or furnishing of inaccurate particulars. While deciding the issue the Ld. CIT(A)

relied on the decisions of the Hon'ble Jurisdictional High Court in the case of CIT v. TM Abdul Azeez & Co in TC(A) No.1128/2006 dated 19.07.2012 (unreported case), wherein the Hon'ble High Court placing reliance on the Apex Court decision in the case of CIT v. Reliance Petroproducts Pvt. Ltd., (2010) 322 ITR 158 held that in order to expose the assessee to penalty, unless the case is strictly covered by the provision (i.e. penalty provision), the penalty provision cannot be invoked. Further that, mere making a claim, which is not sustainable in law, by itself, would not amount to furnishing inaccurate particulars regarding the income of the assessee.

5. Before us the Ld. DR argued by stating that the assessee had furnished inaccurate particulars of income because the assessee had claimed the rental income under the head 'business income' in order to avoid tax. It was therefore pleaded that the order of the Ld.AO may be reinstated. The Ld. AR on the other hand relied on the order of the Ld. CIT(A).

6. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent

that the assessee had disclosed its entire income. Further on the bonafide belief that the income received for providing amenities could be treated as business income; the assessee had claimed it under the head "income from business". Therefore it cannot be construed that the assessee had concealed its income or furnished inaccurate particulars of income as rightly held by the Ld. CIT(A). Considering the facts and circumstance of the case, we do not find it necessary to interfere with the order of the LD. CIT(A), who had rightly relied on the decision of the various higher judiciary and the Hon'ble Apex court cited supra.

7. In the result the appeal of the Revenue is dismissed.

Order pronounced on 22nd March, 2017 at Chennai.

Sd/-
(जी.पवन कुमार)
(G. Pavan Kumar)
न्यायिक सदस्य /Judicial Member

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 22nd March, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT, | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |