

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

I.T.A. No.4782/M/2014 (Assessment Year: **2009-2010**)

A Surti Developers Pvt Ltd., C/o. M/s. Ravi & Dev, Chartered Accountants, 601, 'A' Wing, Aurus Chambers, Behind Mahindra Towers, S.S. Amrutwar Marg, Worli, Mumbai – 400 013.	बनाम/ Vs.	Addl. CIT (TDS), Range-1, Mumbai.
स्थायी लेखा सं./PAN : AAACA8288R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	: Shri Sanjeev Mehta
प्रत्यर्थी की ओर से/ Respondent by	: Shri A.B. Koli, DR

सुनवाई की तारीख / Date of Hearing : 31.08.2016

घोषणा की तारीख /Date of Pronouncement : 23.09.2016

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 15.7.2014 is against the order of the CIT (A)-9, Mumbai dated 3.6.2014 for the assessment year 2009-2010. In this appeal, assessee raised the following grounds which read as under:

- "1. The order passed by the Ld CIT (A), Mumbai confirming the levy of penalty u/s 271C of the Income Tax Act, 1961 by the Assessing Officer is both bad in law and bad in facts.
2. The Ld CIT (A) erred in law as well as in facts in confirming the levy of penalty of Rs. 16,96,382/- u/s 271C of the Income Tax Act, 1961 in spite of the fact that the assessee's quantum appeal regarding levy of TDS on payment of lease premium to MMRDS was pending before the CIT (A)-12, Mumbai and this fact was in knowledge of the CIT (A)."

2. The only issue involved in this appeal relates to the penalty u/s 271C of the Act. Brief facts include that in the order u/s 201(1) / 201(1A) of the Act, AO observed that the assessee had made lease premium payment of Rs. 60,55,050/- to M/s. Metropolitan Region Development Authority (MMRDS). AO opined that the same amount attracts TDS u/s 194I of the Act. Considering the assessee's non-compliance of the provision of section 194I of the Act as well as the assessee's

failure to establish the reason for non-compliance, AO levied penalty of Rs. 16,96,382/- u/s 271C of the Act. Aggrieved, assessee carried the matter in appeal before the CIT (A).

3. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) dismissed the appeal. Therefore, assessee is in further appeal before the Tribunal.

4. During the proceedings before us, at the outset, Ld Counsel for the assessee submitted that though the fact of pending finalization of the quantum appeal, regarding levy of TDS on payment of lease premium to MMRDA, before the CIT (A)-12, Mumbai was brought to the notice of the first appellate authority, CIT (A) ignored the same and confirmed the penalty. He further mentioned that the FAA passed the order on quantum appeal on 11.8.2014 and the appeal was allowed. Considering the same, it is the submission of the Id Counsel for the assessee that since, the quantum appeal is allowed the penalty levied in this regard is required to be deleted.

5. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before us, we find, the order of FAA on quantum appeal was not available before the CIT (A) at the time of adjudication of the appeal on the issue of penalty u/s 271C. However, in the quantum appeal, CIT (A)-12 granted relief to the assessee and allowed the appeal. Considering the same, the penalty levied in the regard is required to be deleted. We order accordingly. Thus, the grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 23rd September, 2016.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 23.09.2016
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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