

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A”, NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI K. N. CHARY, JUDICIAL MEMBER**

**ITA No.3904/Del/2014
Assessment Year : 2007-08**

ACIT, Circle-1(1), New Delhi.	Vs.	Anjala Exhibitors Pvt. Ltd., G-80, Lajpat Nagar-1, New Delhi. PAN : AAACA 0219 J
(Appellant)		(Respondent)

Appellant by : Shri S. K. Jain, Sr.DR
Respondent by : Shri Ranjan Chopra, CA
Date of hearing : 28-03-2017
Date of pronouncement : 29-03-2017

ORDER

PER S.V. MEHROTRA, A.M.:

This is an appeal filed by the Revenue against the order dated 16.04.2014 passed by the Commissioner of Income Tax (Appeals)-IV, New Delhi, u/s 271(1)(c) of the Income Tax Act, 1961 (in short “the Act”), relating to assessment year 2007-08.

2. Brief facts of the case are that the assessee had filed return declaring income of Rs.95,42,871/-. The assessment was completed at a total income of Rs.1,27,09,506/- and penalty proceedings u/s 271(1)(c) were also initiated. The Assessing Officer levied a penalty of Rs.10,66,000/-. The ld. CIT(A) deleted the penalty by observing in para 5.1 as under :-

“5.1 I have carefully considered the submissions of ld. AR and perused the order

passed by the AO. I find that the AO made addition of Rs.31,66,635/- by treating the same as income from other sources as against the income from house property declared by the appellant. On perusal of the order of the Hon'ble ITAT dt. 31.5.2013, I find that the Hon'ble ITAT has allowed the appeal of the appellant filed against CIT (Appeals) order. For sake of convenience, findings of the Hon'ble ITAT as given in para 15 of the order are reproduced as under:

"15. Respectfully following the judgment of Hon'ble High Court of Bombay in the case of Parekh Traders vs. CIT (Poona), (Supra) we hold that income derived as rent from property must be computed under that specific head regardless of the fact that property had at one point of time been utilized by the assessee for business purposes. Such property cannot be treated as a business asset and rent thereof as income from business. In view of above, we further observe that a distinction must be drawn between the letting out of land or house property on the one hand and of plant and machinery on the other hand. The Hon'ble Bombay High Court has clearly held that plant and machinery are commercial assets and their exploitation even by means of letting out, yields or bring income from business and per contra, income earned from letting out the building is income from property. In the case in hand the PVR Ltd. Taken over only cinema buildings on rent and remains furniture, fixtures and other equipments have been returned by the PVR Ltd. to the assessee, accordingly fixed rental earned there from deserves to be treated as rental income from house property. Resultantly, grounds no. 2 of the assessee is allowed with a direction to the AO that the receipts from PVR Ltd. by the assessee be treated as income from house property and all consequential benefits and deductions be allowed to the assessee in this regards. In the result, appeal of the assessee is allowed as indicated above."

In view of the above findings of the Hon'ble ITAT, the penalty order passed by the AO has no legs to stand. Therefore, the penalty of Rs.10,66,000/- levied by the AO is directed to be deleted. This ground of appeal is allowed."

3. The Department is in appeal before us and has taken following ground of appeal :-

"Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty amounting to Rs.10,66,000/- as the revenue is already in appeal on quantum."

4. After hearing both the parties, we fail to understand that as to why the Revenue is in appeal when the quantum addition had already been deleted by

the Tribunal as is evident from the observations of the Id. CIT(A). Accordingly, the appeal of the Revenue is dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this 29th day of March, 2017.

Sd/-
(K. N. CHARY)
JUDICIAL MEMBER

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 29-03-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi