आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'G ' मुंबई ।

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

सर्वश्री विजयपाल राव, न्या.स **एवं** डी. करुणाकर राव, **लेखा सदस्य ।**

BEFORE SHRI VIJAY PAL RAO, JM & SHRI. D.KARUNAKARA RAO , AM ,

आयकर अपील सं./I.T.A. No.2602/Mum/2011

(**निर्धारण वर्ष** / Assessment Year : 2005-06)

M/s. The Western India Oil Distribution Co. Ltd. Petroleum Installation, Antop Hill Road, P.O. Wadala, Mumbai 400037	**बनाम**/ Vs.	Income Tax Officer, 7(3)(3) Aayakar Bhavan, M.K. Road, Mumbai 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACT 0057 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Ms. Priyanka J. Mane
प्रत्यर्थी की ओर से/Respondent by :	Shri. Vivek Batra(DR)
सुनवाई की तारीख / Dt. of Hearing :	18th December 2014
घोषणा कीतारीख/Dt.OfPronouncement:	31st December 2014

आदेश / O R D E R

PER : विजयपाल राव, न्या.स. / VIJAY PAL RAO, JM

This appeal filed by the Assessee is directed against the order dated 23.11.2010 of the Commissioner of Income Tax (Appeals) arising from penalty order passed u/s.271(1)(c) of the Income Tax Act for the Assessment Year 2005-06.

2. The assessee has raised the following grounds in this appeal;

"1.On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax(A) erred in confirming the levy of penalty u/s.271(1)(c) @ 100% on amount of tax sought to be evaded on the income of Rs.4,88,232/-
2. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (A) failed to appreciate the fact that the amount of rent of Rs.4,88,232/- was already added back u/s.40(a) of I.T. Act in the returned income.
3. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (A) erred in observing that the claim of rent payable is based on inaccurate particulars of income and failed to appreciate the fact that the entire issue of the

payment of rent is a subject matter of litigation known to the department for number of years.
4. The Appellant reserves its right to add, amend alter or delete any of the grounds of appeal."

3. The assessment was completed on 28.12.2007 u/s.143(3) of the I.T. Act, whereby the AO disallowed an amount of Rs.12,71,062/- on account of rent claimed as payable by the assessee for the premises of BPT occupied by the assessee. The disallowance was made by the AO on account of dispute between the parties was pending before the Hon'ble High Court of Bombay. Though the assessee has been claimed the same as expenses on the basis of Mercantile Accounting System. The AO in the assessment held as the liability is unascertained. The penalty was initiated u/s.271(1)© for furnishing inaccurate particulars. The AO levied a penalty of Rs.4,66,344/- being 100% of the tax to be evaded by the assessee in respect of the claim of rent of Rs.12,71,062/- which was disallowed. The assessee challenged the action of the AO before the CIT(A). The CIT(A) has deleted the penalty with respect to lease rent of Rs.16,82,478/- as a liability of payment of rent was finally decided by the Hon'ble Supreme Court and directing the assessee computing the rent payable. However, the CIT(A) has confirmed penalty in respect of rent of Rs.4,88,232/- payable to Indian Railways. This amount was disallowed on account of non-deduction of TDS u/s.40(a) and not on the ground of disputed liability.

4. Before us, the Ld. AR of the assessee has pointed out that in the computation of the income the assessee itself as disallowed this sum of Rs.4,88,232/- u/s.40(a) and the same disallowance was taken by the AO while framing the assessment. Therefore, there is no separate disallowance by the AO. In respect of the said amount of rent payable to Northern Railway u/s.40(a). She has referred the return of income as well as computation of income at page 1 & 2 of the paper book. Thus, the Ld. AR has submitted that there is no concealment or inaccurate particulars of income on part of the assessee when the assessee itself has disallowed the amount in question u/s.40(a). On the other hand, Ld. DR has not disputed this fact pointed out by the assessee that

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the rent of Rs.4,88,232/- was disallowed by the assessee itself in the computation of income.

5. Having considered rival submissions as well as relevant material on record we find that there is no additional disallowance made by the AO so far as rent of Rs.4,88,232/- payable to Northern Railway. The AO has taken the disallowance which was already made by the assessee in its computation of income. The confusion appears to have in the mind of the AO at the time initiating the penalty on account of computation of income in the assessment by taking the net profit from the profit and loss account of the assessee and thereafter made certain disallowances including those of which assessee itself made in the computation. The disallowance u/s.40(a) on account of non-deduction of tax in respect of rent payable to Northern India of Rs.4,88,232/- was very much made by the assessee in the computation of income, therefore, there is no question of furnishing wrong particulars of income or concealment of income. Therefore, the action of the AO initiating the penalty against the disallowance of rent payable to Northern Railway of Rs.4,88,232/- lacks any sincerity towards assessment proceedings. When this amount was already disallowed by the assessee itself then initiating the proceedings u/s.271(1)(c) is highly improper and contrary to the provisions of law. Accordingly, we delete the penalty levied u/s.271(1)(c) which was confirmed by the CIT(A).

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

Order pronounced on this 31st day of December, 2014.

Sd/-	Sd/-
(डी. करुणाकर राव) लेखा सदस्य **(D. KARUNAKARA RAO)** Accountant Member	**(विजयपाल राव)** न्यायिक सदस्य **(VIJAY PAL RAO)** Judicial Member

Place: Mumbai : Dated: 31st December 2014

A.K.Patel

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Copy forwarded to:

1	Appellant
2	Respondent
3	CIT
4	CIT(A)
5	DR

/TRUE COPY/
BY ORDER
Dy /AR, ITAT, Mumbai