IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

BEFORE SHRI DINESH KUMAR AGARWAL (J.M.)
AND SHRI B. RAMAKOTAIAH (A.M.)

ITA No. 5844/Mum/2011
Assessment Year : 2003-04

M/s Prashant Synthetics Ltd., (now known as Forram Restaurant Pvt. Ltd.), Chemox House, 7 Barrack Road, 6th floor, Bombay Hospital Road, Mumbai – 400 020. PAN AAACP5043K	Vs.	The Income Tax Officer – 1(2)-4, 5th floor, Aayakar Bhavan, Mumbai – 400 020.
(Appellant)		**(Respondent)**

Assessee by: Shri Vijay Mehta
Department by : Shri Rajarshi Dwivedy

Date of hearing	**01-10-2012**
Date of pronouncement	**17-10-2012**

O R D E R

PER DINESH KUMAR AGARWAL, J.M.

This appeal preferred by the assessee is directed against the order dtd. 12-7-2011 passed by the ld. CIT(A) – 2, Mumbai for the A.Y. 2003-04.

2. Briefly stated facts of the case are that the assessee company has taken premises on rent on sub-letting of the property. The assessee has treated the said income under the head 'income from house property'. During the year under consideration, the assessee has received rent of

Rs. 15,14,000/- and after claiming deduction u/s 24 of the Income Tax Act, 1961 (the Act) of Rs. 4,54,320/-, income of Rs. 10,60,080/- has been shown. The assessee after claiming loss/expenses under the head 'profits and gains of business or profession' Rs. 9,02,464/- declared net total income of Rs. 1,57,616/-. However, the A.O. did not accept the assessee,s claim and treated the income from sub-letting of the property as income under the head 'income from other sources' Rs. 15,14,400/- and after allowing expenses u/s 57(iii) Rs. 36,300/-, determined the total income at Rs. 14,78,100/- vide assessment order dtd. 16-09-2005 passed u/s 143(3) of the Act. The A.O. while completing the assessment has also initiated penalty proceeding u/s 271(1)(c) of the Act. In response to show cause notice issued u/s 271(1)(c), the assessee after relying on the decision of the Tribunal in ITO vs. Roborant Investments (P.) Ltd., (2006) 7 SOT 181 (Mum).) and other decisions of the Tribunal, requested to drop the penalty proceedings. However, the A.O. did not accept the assessee's explanation. According to the A.O., the assessee had in his return of income claimed its rental income as 'income from house property' despite not being owner, in order to claim deduction allowable under the head 'income from house property' which amounts to furnishing inaccurate particulars of income and accordingly he imposed penalty of Rs. 1,66,963/- vide order dtd. 31-3-2009 passed u/s 271(1)(c) of the Act. On appeal the ld. CIT(A) while agreeing with the views of the A.O. upheld the penalty imposed by the A.O.

3. Being aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us challenging the sustenance of penalty imposed by the A.O. u/s 271(1)(c) of the Act.

4. At the time of hearing the ld. counsel for the assessee submits that there is no change of income except change of head i.e. the assessee has shown the rental income under the head 'income from house property' which was assessed by the A.O. as 'income from other sources', therefore, there is no concealment on the part of the assessee. The reliance was also placed on the decision of the Tribunal in Roborant Investments (P.) Ltd. (supra) and the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd. vs. CIT in Civil Appeal No. 6924 2012 (arising out of S.L.P. (C) No. 10700 of 2009).

5. On the other hand, the ld. D.R. supports the order of the A.O. and the ld. CIT(A).

6. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that the facts are not in dispute and it is also not in dispute that the assessee has shown the rental income under the head 'income from house property' which was assessed as 'income from other sources'. Thus there is only change of the head of the income.

7. In Price Waterhouse Coopers Pvt. Ltd. (supra) it has been held as under (para 19) :-

> "19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income".

However, the facts of the present case are entirely different inasmuch as it is not the case of the assessee that while filing the return of income due to bonafide error he has failed to show the rental income under the head "other sources" or it is a case of human error, therefore, the decision relied on by the ld. Counsel for the assessee is distinguishable and not applicable to the facts of the present case.

8. In Roborant Investments (P.) Ltd., (supra) it has been held vide para 10 as under :-

> "10. In view of the foregoing, we are of the opinion that mere rejection of a legal claim of the assessee for taxability of income under a particular head of income is not by itself sufficient to warrant imposition of penalty. Tax matters are highly complex and hence there is bound to be a genuine difference of opinion in matters of law between the tax collectors and the taxpayers. It is indeed very difficult for the assessee to predict, in advance, as to what view the AO or appellate authorities would take on the legal claim made by the assessee. Cases involving genuine difference of opinion on matters of law between the assessee and the AO are clearly outside the scope of Expln. 1 to s. 271(1) provided the assessee has made full disclosure of all the relevant facts and also acted bona fide. Tested on the aforesaid parameters, we feel that the learned CIT(A) has correctly cancelled the impugned penalty. His order is, therefore, confirmed".

9. The Hon'ble Apex Court in CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC) after considering various decisions including Dilip N. Shroff vs. JCIT (2007) 291 ITR 519(SC) and Union of India vs. Dharamendra Textile Processors (2008) 306 ITR 277(SC) has observed and held (page 158 head notes) as under:

> "A glance at the provisions of section 271(1)(c) of the Income- tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed y the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability could arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.
>
> Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars"

10. Respectfully following the ratio of the above decisions we are of the view that there is no concealment on the part of the assessee which may

call for levy of penalty u/s 271(1)(c) of the Act and accordingly the penalty imposed by the A.O. and sustained by the ld. CIT(A) is deleted. The grounds taken by the assessee are, therefore, allowed.

11. In the result, assessee's appeal stands allowed.

Order pronounced on 17-10-2012

Sd/-	Sd/-
(B. RAMAKOTAIAH)	(DINESH KUMAR AGARWAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated : 17-10-2012.
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Copy to:
1. The Appellant
2. The Respondent
3. Commissioner of Income Tax (Appeals)- 2, Mumbai
4. Commissioner of Income Tax – 1 Mumbai
5. Departmental Representative, Bench 'C', Mumbai

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ASSTT. REGISTRAR, ITAT, MUMBAI

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