आयकर अपीलीय अधिकरण, मुंबई

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI BENCHES 'F' MUMBAI**

सर्वश्री आय.पी. बंसल, न्यायिक सदस्य /**एवं**

**BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND**

श्री डी. करूणाकर रावु, लेखा सदस्य

**SHRI D.KARUNAKAR RAO, ACCOUNTANT MEMBER**

आयकर अपील सं. / **ITA No.6098/MUM/2011**

**निर्धारण वर्ष** /Assessment Year 2004-05

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| Uni Tex Products Pvt. Ltd.,<br>Sapt Building, J.N.Heredia<br>Marg, Ballard Estate,<br>Mumbai - 400 001. | बनाम/<br>Vs. | The Dy. Commissioner of<br>Income-tax, Cir. 2(3),<br>Room No.555, Aaykar Bhavan,<br>M.K.Road, Mumbai - 400 020; |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACU0760G | | |
| (अपीलार्थी **/Appellant**) | .. | (प्रत्यर्थी / **Respondent**) |

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| अपीलार्थी ओर से/ **Appellant by:** | Shri Y.P.Trivedi &<br>Ms.Usha Dalal |
| प्रत्यर्थी की ओर से/**Respondent by :** | Shri Manish Kanojia |

सुनवाई की तारीख **/ Date of Hearing : 27/05/2013**

घोषणा की तारीख /**Date of Pronouncement : 27/05/2013**

आदेश / O R D E R

PER I.P.BANSAL, J.M:

This is an appeal filed by the assessee. It is directed against the order passed by Ld. CIT(A)-6 Mumbai dated 22/6/2011 for assessment year 2004-05 The grounds of appeal read as under:

> *1. The learned CIT ( A ) erred in confirming penalty on income of addition of Rs. 10,80,000/- levied by AO u/s. 271(1 )(c) of the Income Tax Act, 1961, on account of amenities amount, which was never received by the Appellant.*

*2. The learned CIT ( A) ought to have appreciated that the appellant did not file any inaccurate particulars nor concealed any particulars of income in respect of the said sum of Rs. 10,80,000 /- and hence, penalty for concealment of income for the said sum was not warranted.*
*3. The learned CIT ( A ) failed to appreciate that the penalty proceedings are independent proceedings than the quantum proceedings and even if the addition of Rs.10,80,000/- was confirmed by CIT ( A ) would not automatically tentamount to concealment of income.*

*4. The learned CIT ( A ) failed to appreciate that the Appellant contested the said addition of income of Rs.10,80,000 /- before ITAT and ITAT inadvertently omitted to give finding on the said issue though it was argued by the learned senior counsel of the Appellant that the Appellant did not receive any amount by way of rent or by way of providing amenities, and hence, no addition could have been made by relying on the judgement of the Hon'ble Supreme Court rendered in the case of CIT v. A. Ramon & Co. reported in 67 ITR Pg. 11.*

*5. The learned CIT (A ) erred in holding that since ITAT silent on the issue, penalty for concealment of issue from amenities at Rs. 10,80,000/- has to be confirmed.*

2. The concealment penalty of Rs.19,55,672/- was levied in respect of two additions totalling to Rs.54,51,352/-, out of which addition of Rs.43,71,352/- was earlier deleted by the Tribunal and to that extent the concealment penalty was deleted by Ld. CIT(A). As the order of Tribunal was silent on the addition of Rs.10,80,000/-, which was addition made on account of amenities, Ld. CIT(A) has upheld the penalty. Aggrieved assessee has filed aforementioned appeal.

3. At the outset it was pointed out by Ld. AR that as Tribunal did not adjudicate upon the addition of Rs.10,80,000/- an application under section 254(2) was filed and the order was recalled for adjudication of this addition. The Tribunal has considered the issue regarding the impugned addition vide its order dated 27/2/2013 in ITA No.2487/Mum/2009 and the impugned addition has been deleted. Thus, it was pleaded by Ld. AR that when addition itself has been deleted then penalty does not survive. A copy of the said order was placed on our record and a copy was also given to Ld. DR.

4. Ld. D.R did not object to the submissions of the assessee that impugned addition has been deleted by the aforementioned order.

5. In this view of the situation, after hearing both the parties, as addition itself has been deleted, we see no justification in the levy of concealment penalty in respect of impugned addition of Rs.10,80,000/-. The same is ordered to be deleted and the appeal filed by the assessee is allowed.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27/05/2013
आदेश की घोषणा खुले न्यायालय में दिनांकः 27/05/2013 को की गई ।

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| Sd/- | Sd/- |
| (डी. करूणाकर रावु / **D.KARUNAKAR RAO**) | (आय.पी. बंसल **/ I.P. BANSAL**) |
| लेखा सदस्य **/ ACCOUNTANT MEMBER** | न्यायिक सदस्य **/ JUDICIAL MEMBER** |

मुंबई Mumbai; दिनांक Dated 27/05/2013

**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.

**आदेशानुसार**/ BY ORDER,

सत्यापित प्रति //True Copy//

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

व.नि.स./*Vm*, Sr. PS