IN THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai

Before Shri D. Manmohan, Vice President
and Shri Sanjay Arora, Accountant Member

ITA No. 6836/Mum/2011
(Assessment Year: 2002-03)

A C I T - 10(11) Room No. 455, 4th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Reclamation Properties (I) P. Ltd. ICICI Tower, Bandra Kurla Complex Mumbai 400051 PAN - AAACI 1564 K
Appellant		**Respondent**

Appellant by: Shri O.P. Meena
Respondent by: Ms. Rushna Daruwalla

Date of Hearing: 19.12.2012
Date of Pronouncement: 19.12.2012

<u>O R D E R</u>

Per D. Manmohan, V.P.

This appeal is filed at the instance of the Revenue and it pertains to A.Y. 2002-03.

2. Penalty levied by the AO under section 271(1)(c) of the Act was set aside by the learned CIT(A) and hence the Revenue is in appeal before us.

3. The brief facts of the case are that the assessee declared total income of ₹78,85,080/- referable to house property income for the previous year relevant to A.Y. 2002-03. During the course of assessment proceedings the AO noticed that an associate company of the assessee has received a much higher rent and hence the assessee ought to have received a higher rent in respect of the property let out by it. In the opinion of the AO the fair rent of the property should have been taken at ₹2,62,25,960/- instead of the actual receipt amounting to ₹1,12,64,400/- and accordingly he proceeded to complete the assessment. Thereafter penalty proceedings were initiated wherein the stand of the AO was that the assessee adopted lesser value

which amounted to concealment of income. Despite explanation, penalty of ₹37,38,894/- was levied.

4. Aggrieved by the order of the AO the assessee preferred an appeal before CIT(A) wherein it was contended that re-determination of fair rent of the premises let out by the assessee was not in accordance with law and penalty ought not have been levied on that basis. It was also submitted that on identical circumstances for A.Y. 2004-05 the Appellate Tribunal deleted the enhancement made by the AO in the rental income and the facts being same in this year also, there is no case for levy of penalty. The learned CIT(A) cancelled the penalty in the light of the decision of the ITAT for A.Y. 2004-05. Aggrieved Revenue is in appeal before us.

5. At the time of hearing the learned counsel for the assessee filed a copy of the order of the ITAT "D" Bench Mumbai in assessee's own case for assessment years 2001-02 to 2003-04 (ITA No. 2189 to 2192/Mum/2010 dated 30.06.2011) to submit that the impugned addition made by the AO was set aside by the Tribunal in which event there is no case for levy of penalty.

6. On the other hand, the learned D.R. relied upon the order passed by the AO.

7. Since the very basis for levy of penalty no longer stands, in the light of the decision of the ITAT (supra), it is not a fit case for levy of penalty. Therefore we uphold the order of the learned CIT(A) and dismiss the appeal filed by the Revenue.

Order pronounced in the open court on 19th December, 2012.

Sd/-	Sd/-
(Sanjay Arora)	**(D. Manmohan)**
Accountant Member	**Vice President**

Mumbai, Dated: 19th December, 2012

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 21, Mumbai*
4. *The CIT– X, Mumbai City*
5. *The DR, "D" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.