

**आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1290/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2009-10)

M/s. Surinco Workwear Private Ltd., 36, Marol Industrial Estate, M. Vasanji Road, Andheri (E), Mumbai-400 059	<b>बनाम/</b>  v.	ITO 8(3)(2) R.No. 412, Aayakar Bhavan, Mumbai 400021
स्थायी लेखा सं./PAN: AAACS5694K		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:		Ms. Heena Sheth
Revenue by:		Shri. O.P Meena (DR)

सुनवाई की तारीख /**Date of Hearing** : 04.02.2019

घोषणा की तारीख /**Date of Pronouncement** : 01.05.2019

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member:**

This appeal, filed by assessee, being ITA No. 1290/Mum/2017, is directed against appellate order dated 01.11.2016 in appeal no. CIT(A)-18/IT-126/ITO-8(3)(2)/14-15, passed by learned Commissioner of Income Tax(Appeals)-18, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10, the appellate proceedings had arisen before learned CIT(A) from the penalty order dated 28.03.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2009-10.

2. The grounds of appeal raised by assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

**"PRELIMINARY GROUNDS OF APPEAL**

1 . On the facts and in the circumstances of the case, penalty proceedings initiated in assessment order by the learned I.T.O, 8(3)-2, Mumbai (hereinafter referred to as "the learned AO") by issue of invalid notice under Section 274 read with section 271(1)(c) of the Income tax Act, 1961 (hereinafter referred to as "the Act") in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is bad in law.

2. On the facts and in the circumstances of the case the penalty proceedings initiated by the learned AO without serving a valid notice were illegal and invalid.

**The following alternative grounds of appeal are without prejudice to preliminary grounds of appeal:**

3. On the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals) - 18, Mumbai (hereinafter referred to as "the learned CIT(A)"), erred in passing the order under appeal dated 1st November, 2016 which was dispatched for serving upon appellant on 23rd December, 2016 with the intent to defeat Appellant's declaration filed on 7th November, 2016 under section 204 of the Finance Act, 2016 under Direct Tax Dispute Resolution Scheme, 2016 . He ought not to have done so.

4. The learned CIT(A) erred in confirming the levy of penalty of Rs. 1,75,000/- on the grounds of addition of Rs. 2,31,775/- under section 41(1) of the Act and upon merely change of head of income in respect of Rs. 10,98,000/-. He ought not to have done so.

*Your appellants crave leave to add, alter or modify any or all of the foregoing ground of appeal, if required."*

3. The brief facts of the case are that the assessee's major source of income declared in return of income filed with Revenue is 'Income from House Property' of Rs. 10,98,000/- and other income of the

assessee were from other sources of Rs. 39,637/- from electricity and water charges receipts.

4. The assessee had shown sum of Rs. 2,31,775/- under the head Sundry Creditors payable to M/s. Alok Textile Traders in its Balance Sheet as at 31.03.2009 . The assessee was asked by the AO to file confirmation from the aforesaid party. The assessee was not able to file confirmation from the said party which led the AO to hold that the assessee could not prove genuineness of the said creditor which led AO to make additions to the income of the assessee in quantum assessment to the tune of Rs. 2,31,775/- u/s 41(1) of the 1961 Act , vide assessment order dated 30.11.2011 passed by the AO u/s. 143(3) of the 1961 Act. This led to invocation of penalty proceedings u/s 271(1)(c) of the 1961 Act by the AO against the assessee for furnishing of inaccurate particulars of income. The appeal filed against quantum additions by the assessee before learned CIT(A) also stood dismissed by learned CIT(A) vide appellate order dated 30.10.2012 and the additions to income in quantum stood confirmed by learned CIT(A). Later this additions to the income u/s 41(1) of the 1961 Act led to the levying of the penalty by the AO u/s 271(1)(c) of the 1961 Act vide penalty order dated 28.03.2014 passed by the AO u/s 271(1)(c) of the 1961 Act, with respect to additions of Rs. 2,31,775/- to the income of the assessee u/s 41(1) of the 1961 Act. The assessee in penalty proceedings u/s 271(1)(c) also could not file confirmation from the said party and as per version of the assessee the said concern M/s Alok Textile Traders stood merged with M/s. Alok Textiles Ltd. which was stated to be the main reason for not getting confirmation from the said party. The explanation filed by the assessee in penalty proceedings u/s 271(1)(c) also stood rejected by the AO leading to levy of penalty u/s 271(1)(c) of the 1961 Act vide penalty order dated 28.03.2014 with respect to additions as were made by the AO u/s 41(1) of the 1961 Act.

4.2 On the second issue , the AO observed during assessment proceedings u/s 143(3) of the 1961 Act from rent agreement filed by the assessee that the assessee has given the premises of 750 square feet at 2<sup>nd</sup> floor and open space of 4800 square feet on ground adjoining to the building situated at 36, Marol Co-operative Industrial Estate , Mr Vasanji Road, Andheri East, Mumbai-400059 , while the said asset is not appearing on the Balance Sheet of the assessee company. The assessee submitted that the said property is taken on leave and license basis from Shri Viresh B. Ghatlia , who is Director of the assessee. Thus, the AO observed that the income derived from transaction is only income from subletting of the aforesaid premises, which was brought to tax by the AO as income under the head 'Income from other sources'. The AO observed that the assessee has declared aforesaid compensation/rent received of Rs. 10,98,000/- under the head 'Income from House Property' on which deduction u/s. 24(1) was also claimed by the assessee. The AO brought the said income to tax as income chargeable to tax under the head 'Income from other sources' and deduction u/s 24(1) was also denied to the assessee , vide assessment order dated 30.11.2011 passed by the AO u/s 143(3) of the 1961 Act. This led to the invocation of penalty proceeding u/s. 271(1)(c) of the 1961 Act for furnishing of inaccurate particulars of income . In the mean time quantum addition were challenged by the assessee before the Ld. CIT(A) which appeal of the assessee stood dismissed by Ld. CIT(A) vide appellate order dated 30.10.2012 wherein learned CIT(A) held that the assessee is not eligible for deduction u/s 24(1) of the 1961 Act as the assessee is not the owner of the property. This also led to the levy of penalty u/s. 271(1)(c) for furnishing of inaccurate particulars of income and explanation furnished by the assessee stood rejected by the AO , vide penalty order dated 28.03.2014 passed by the AO u/s 271(1)(c) of the 1961 Act.

5. Aggrieved by the penalty order dated 28.03.2014 passed by the AO u/s 271(1)(c) of the 1961 Act, the assessee filed first appeal before learned CIT(A) which stood dismissed by learned CIT(A) on both the grounds vide appellate order dated 01.11.2016 , by holding as under:-

*“Only ground is levy of penalty of Rs. 1,75,000/- u/s. 271(1)(c). I have perused the penalty order as well as the Assessment Order and considered the contentions of the appellant and find that the Assessing Officer has levied penalty on addition of Rs. 2,31,775/- u/s. 41(1) in respect of one sundry creditor M/s. Alok Textiles Trader.*

*The applicant has failed to produce confirmation of the said party during assessment and penalty proceedings and till today no confirmation is produced. I, therefore, find that there is a cessation of liability which was wrongly reflected as sundry credit in the Balance Sheet thereby filing inaccurate particulars of income. Moreover the appellant has accepted the said addition without recourse to further remedies.*

*Similarly the appellant has shown deduction u/s. 24(1) in respect of compensation of Rs. 10,98,000/- wrongly shown as rent. Even though the appellant was not the owner of the property therefore, the same was directly treated as income from other sources arising out of sub-letting. I, therefore, find that the appellant has made the wrong claim of deduction to u/s. 24 misrepresenting Leave & License fee as rent. Even before me similar contentions were reiterated.*

*In view of the above, I find that the levy of penalty on both the counts is justifiable on facts because the case laws cited by the appellant are distinguishable on facts. I also find that this is not case of bonafide belief or rejection of debatable claim. This is a clear case of Non-Existing Liability and wrongly claim of deduction. Accordingly, I uphold the penalty of Rs. 1,75,000/- and dismiss the appeal of the appellant.”*

6. Now the matter is before the tribunal at the behest of the assessee. The Ld. Counsel for the assessee stated that these are appeals against penalty levied by the AO u/s. 271(1)(c) of the Act

which penalty was later confirmed by learned CIT(A). It was submitted that penalty proceedings were invoked by the AO u/s 271(1)(c) on ground that the assessee has furnished inaccurate particulars of income on both the issues which is found mentioned in the assessment order dated 30.11.2011 passed by the AO u/s. 143(3) of the 1961 Act at para 5. It was submitted that penalty proceeding were initiated for furnishing inaccurate particulars of income and penalty was later levied on both the issues also on the furnishing of inaccurate particulars of income. Our attention was drawn to page 5/paper book filed by the assessee with tribunal, wherein notice dated 30.11.2011 issued by the AO u/s 271(1)(c) read with Section 274 of the 1961 Act is placed. It was submitted that the relevant column /limb under which penalty proceedings were invoked is not struck off in the said penalty notice dated 30.11.2011 issued by the AO u/s 271(1)(c) of the 1961 Act. On merit, it was submitted that there were additions made to income of the assessee on account of cessation of liability u/s. 41(1) of the 1961 Act to the tune of Rs. 2,31,775/- on the ground that the assessee could not furnish confirmation from the creditors which led AO to conclude that the aforesaid sundry creditors is not genuine. It was claimed that the assessee's appeal before learned CIT(A) in quantum stood dismissed and the assessee did not challenge additions in quantum before ITAT. It was submitted that full particulars were disclosed in the return of income filed with the revenue. It was submitted that no cogent incriminating material was brought on record by the AO to prove that the assessee has deliberately furnished inaccurate particulars of income. Our attention was drawn to page no. 68 of the paper book filed with the tribunal wherein audited Balance Sheet of the assessee as at 31.03.2009 is placed wherein under the head 'Current Liabilities' , Sundry Creditors were shown of Rs. 3,21,775/-. Our attention was also drawn to Page no. 73 /paper book, wherein sub-schedule to audited financial statements for the year ended 31.03.2009 is placed, wherein break-up of Sundry Creditors is reflected which showed an amount of Rs. 2,31,775/- payable to M/s

Alok Textile Traders. It was submitted that this concern M/s Alok Textile Traders stood merged with M/s Alok Textiles Ltd. .It was submitted that the assessee could not obtain Balance confirmation from this party but amount is payable by the assessee to this party which is reflected as payable to said concern M/s Alok Textile Traders(Now Alok Textiles Limited) in its books of accounts as at 31.03.2009 . It was submitted that merely because confirmation could not be filed , it does not prove that this creditor is not genuine. It was submitted that no cogent incriminating material is brought on record by authorities below to prove that the said creditor is not genuine . Our attention was drawn to page no. 98 of the paper book wherein decision of ITAT, Mumbai in the case of Shiva Pigments Private Limited v. ITO in ITA no. 3091/Mum/2011 for AY 2007-08, order dated 18.07.2012 , para no. 8 wherein penalty u/s 271(1)(c) on the similar grounds of additions made u/s 41(1) were deleted by ITAT, Mumbai .

6.2 On the second issue on which penalty was levied u/s 271(1)(c) of the 1961 Act , It was submitted by learned counsel for the assessee that the assessee declared income from rent of Rs. 10,98,000/- under the head 'Income from house property' and statutory deduction u/s. 24(1) were also claimed. The said deduction u/s 24(1) were denied to the assessee as the income from rent was assessed to tax by the AO under the head 'Income from other Sources'. It was submitted that there was merely a change of head of income from 'Income from House Property' under which income was offered to tax by the assessee , to other head of income 'Income from Other Sources' under which the AO assessed the said income to tax, which as per learned counsel for the assessee will not entail levy of penalty u/s. 271(1)(c) of the Act. Our attention was brought to the order of the ITAT in assessee's own case in ITA no. 1213/Mum/2011 for AY 2003-04 , vide appellate order dated 09.02.2015 wherein the rental income was held to be chargeable to tax under the head 'Income from House Property' as against offered to tax by the assessee under the head 'Profits and

Gains of Business or Profession' by the authorities below and it was held by tribunal that no penalty can be levied u/s 271(1)(c) for merely change of head under which income was assessed vis-a-vis the head of income under which the income was offered to tax by the assessee. It is claimed by the assessee, thus, no penalty can be levied u/s 271(1)(c) in the case where there is merely a change of head of income in which income was brought to tax by the authorities vis-a-vis head of income in which income was offered to tax by the assessee. The said order of the tribunal is placed in paper book/page 83-85. Our attention was also drawn to assessment order(s) for AY 2002-03, 2004-05 to 2006-07 passed by the AO u/s 143(3) read with Section 147 of the 1961 (placed in paper book/page 75-82) in assessee's own case, wherein consistently the authorities are bringing to tax rental income under the head 'Income from House Property' and deduction u/s 24(1) was allowed. The assessee also relied upon decision of Hon'ble Bombay High Court in the case of CIT v. Bennett Coleman & Co. Ltd (2013) 259 CTR 383 (Bom) and it was contended that mere change of head of income by authorities to bring the income to tax which otherwise was declared in return of income filed with the Revenue will not lead to levy of penalty u/s 271(1)(c) of the 1961 Act. The assessee also relied upon decision of Hon'ble Supreme Court in the case of CIT v. Reliance Petroproducts Private Limited reported reported in (2010) 322 ITR 158(SC).

7. The Ld. DR on the other hand submitted that penalty proceedings u/s 271(1)(c) of the 1961 Act were initiated for furnishing of inaccurate particulars of income and it was also levied on the same ground. It was submitted that the assessee was duly confronted as to the charge which the assessee has to meet and the assessee duly participated in penalty proceedings. It was submitted by learned DR that now the assessee cannot turn around and complaint that notice issued by the AO u/s 271(1)(c) read with Section 274 is defective. The Ld. DR relied upon the decision of the tribunal in the case of



Earthmoving Equipment Service Corporation v. DCIT in ITA no. 6617/Mum/2014 for AY 2010-11 vide order dated 02.05.2017. The learned DR also relied upon decision in the case of Dhaval K. Jain v. ITO in ITA no. 996/Mum/2014 for AY 2003-04 . The learned DR also relied upon decision of Hon'ble Bombay High Court in the case of CIT v. Smt. Kaushalya (1995) 216 ITR 660 (Bom). On merits it was submitted that no balance confirmation was submitted by the assessee from M/s Alok Textile Traders and hence additions were made u/s. 41(1) of the 1961 on the ground that this creditor is not genuine. On second issue. It was submitted by learned DR that assessee has wrongly declared rent received from property taken on leave & licence basis under the head 'income and house property' while the said income is required to be brought to tax under the head 'Income from other sources'. It was submitted that the deduction u/s. 24(1) was wrongly claimed by the assessee . It was also submitted that for earlier year in assessee's own case the tribunal has deleted the penalty for AY 2003-04 in ITA no. 1213/Mum/2011 vide order dated 09.02.2015 on the grounds that mere change of head of income under which income is chargeable to tax will not entail penalty u/s 271(1)(c) of the 1961 Act but it was submitted by learned DR that the tribunal had not dealt with issue of wrong claim of deduction u/s. 24(1) of the 1961 Act in the said order.

8. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the additions to the income of the assessee were made by the AO in quantum assessment on two counts , firstly u/s 41(1) of the 1961 Act towards an amount of Rs. 2,31,775/- shown to be payable by the assessee in its audited financial statements to M/s Alok Textile Traders as on 31.03.2009, on the ground that the said liability is not genuine and had ceased to exist as the assessee was not able to produce confirmation from the said party before the AO. The assessee claimed that the said Alok Textile Traders stood merged with M/s Alok

Textiles Limited and it was cited as one of the reasons by the assessee for not getting confirmation from the said party. The said sum of Rs. 2,31,775/- was, however, duly reflected in its audited financial statements of the assessee company for the year ended 31.03.2009 as payable to M/s. Alok Textile Traders and also in the immediately preceding year ending 31.03.2008 as is reflected in corresponding figures of preceding year in the audited financial statements for the year ended 31.03.2009. The audited financial statement for the year ended 31.03.2009 is placed on record in file in paper book. The assessee has claimed that the said amount is payable by it and it is reflected in its books of accounts to be payable which is acknowledgement of debt by assessee to said Alok Textile Traders and the liability has not ceased to exist. It is also not a case where the said sum is unilaterally credited back by the assessee in its books of accounts and in Profit and Loss Account but not offered for tax. The assessee is consistently claiming that the liability to pay to Alok Textile Traders is subsisting and the assessee is liable to paid. It is claimed that complete disclosures were made in the return of income filed with Revenue and it could not be said that assessee has furnished inaccurate particulars of income or concealed the particulars of income in the return of income filed with Revenue. It was also explained by the assessee that said M/s. Alok Textile Traders got merged with M/s. Alok Textiles Ltd. which is the main reason that the assessee could not bring the confirmation which led to the addition to the income of the assessee by the AO in quantum assessment u/s. 41(1) of the 1961 Act. The appeal filed by the assessee with Ld. CIT(A) against quantum assessment also stood dismissed and the additions attained finality as no further appeal was filed against quantum assessment by the assessee with tribunal. This led to the levy of penalty u/s 271(1)(c) by the AO against the assessee for furnishing of inaccurate particulars of income which was later confirmed by Ld. CIT(A) vide its appellate order. In our considered view keeping in view factual matrix of the case, penalty is not leviable on this ground

because assessee had made acknowledgment of the debt in its audited financial statement for the year under consideration and consistently claim is made that the said liability has not ceased to exist and the assessee is liable to pay said sum to M/s ALok Textile Traders( Now Alok Textiles Limited). The assessee also made complete disclosure in the return of income filed with the Revenue as to the aforesaid liability payable by the assessee and said sum stood reflected as payable by the assessee in its audited books of accounts. The auditors have also not made any adverse comments as to the subsistence of this liability. Merely because the contentions of the assessee stood dismissed by the Revenue in quantum assessment wherein additions to income were made u/s 41(1) of the 1961 Act on the grounds that said liability has ceased to exist, levy of penalty u/s 271(1)(c) is not automatic. The assessee is claiming the said amount is still payable and the aforesaid amount is duly reflected in its audited financial statement for year ended 31.03.2009 as payable by the assessee to said concern which is acknowledgment of debt by the assessee. Since the assessee was not able to bring conformation from the said party could be a valid reason and justification for making additions to the income of the assessee in quantum assessment by the AO but that is not sufficient to levy penalty u/s 271(1)(c) as the burden on Revenue under penalty provisions are on higher pedestal. The assessee has offered an explanation which is a bonafide explanation as to existence of its liability to said concern as on 31.03.2009 which is also reflected to be payable in its books of accounts . The assessee did discharge its burden as is laid on it under penalty provisions as is contained in Section 271(1)(c) of the 1961 Act. Now it is for the Revenue to rebut the same with cogent incriminating material that explanation offered by the assessee in penalty provisions are false. The Revenue did not bring any incriminating material to prove that the said liability ceased to exist and the assessee had obtained any benefit as is contemplated u/s 41(1) of the 1961 Act. The AO did not made any enquiry with the aforesaid party as no notices u/s. 133(6) or summons u/s 131 were

issued by the AO to Alok Textile Traders ( Now Alok Textiles Limited) to unravel truth. The AO has not brought any cogent incriminating material to prove that the assessee has obtained any benefit as is contemplated u/s. 41(1) of the 1961 Act. The assessee has rightly relied on the decision of ITAT, Mumbai benches in the case of Shiva Pigments Private Limited v. ITO in ITA No. 3091/Mum/2011 , order dated 18.07.2012. Under these circumstances we are of the view keeping in view factual matrix of the case that no penalty u/s 271(1)(c) is exigible on the assessee and we hereby order deletion of the penalty as was levied by the AO on this issue which stood later confirmed by learned CIT(A) u/s 271(1)(c). We order accordingly.

9.2. Secondly penalty was levied by Revenue on the ground that rental income from sub-letting of premises taken on leave and license basis of 750 square feet at 2<sup>nd</sup> floor and open space of 4800 square feet on ground adjoining to the building situated at 36, Marol Co-operative Industrial Estate , Mr Vasanji Road, Andheri East, Mumbai-400059 was declared under the head 'Income from House Property' of which the assessee was not owner while the same ought to have been declared under the head 'Income from Other Sources' and the assessee has also wrongly claimed the statutory deduction u/s 24(1) of the 1961 Act. We have observed that the assessee has taken premises on leave & licence basis from its Director which was further sublet by the assessee . The income from sub-letting of the said premises was offered for taxation by the assessee under the head 'Income from House Property' and as a consequence thereto statutory deduction of 30% on account of Repair and Maintenance was also claimed by the assessee u/s. 24(1) of the 1961 Act. The AO while framing quantum assessment observed that the assessee is not owner of the premises which is a statutory condition u/s. 22 of the Act to bring the rental income to tax under the head 'Income from House Property'. This led the AO to bring the said income from sub-letting of the aforesaid property taken by the assessee on leave and license basis to tax under

the head 'Income from other sources' and consequentially deduction u/s. 24(1) of the 1961 Act was also denied to the assessee by the AO in quantum assessment. The Ld. CIT(A) later confirmed the decision of the AO by dismissing the appeal of the assessee on this ground and matter reached finality as no appeal was filed by the assessee against quantum additions before ITAT. It is also observed that in assessee's own case for AY 2003-04, the said income was offered to tax by the assessee under the head 'Profits and Gains from Business of Profession' in the return of income filed with the Revenue but the authorities below treated the said income as 'Income from house property' and penalty u/s 271(1)(c) of the 1961 Act was levied on the change of head of income under which the income was held to be taxable, while framing assessment. The ITAT was pleased to delete the penalty levied by the AO u/s 271(1)(c) which was later confirmed by learned CIT(A), in assessee's own case in ITA no. 1213/Mum/2011 for AY 2003-04, vide appellate order dated 09.02.2015 by holding as hereunder:-

*"4. We have heard the rival contentions of the Ld. Representatives of both the parties and have also gone through the records. The Ld. A.R. of the assessee has stated that in the past such rental income from warehousing premises was treated as business income. However, in the reopened assessment proceedings, the assessee fairly conceded to the change of head of income as proposed by the AO. There was neither furnishing of inaccurate particulars of income nor of concealment of income. After hearing the Ld. Representative, we agree with the contention of the assessee that it was not a case of furnishing of inaccurate particulars of income or concealment of income. The assessee even had fairly agreed to the change of head of income during the reassessment proceedings. Every case where the claim of the assessee is not accepted cannot be said to be a case of concealment of income. The addition in this case has been made because of change of head of income and not because of furnishing of inaccurate particulars of income or concealment of income. It is not a case where the assessee had deliberately shown the income under a wrong head but under a bonafide belief that the income of the assessee was assessable as business income. In view of this, we do not think it to be a case for levy of penalty under section 271(1)(c) of the Act. The penalty levied by lower authorities is therefore ordered to be deleted.*

*5. In the result, the appeal of the assessee is hereby allowed."*

Thus, tribunal in assessee's own case for AY 2003-04 was pleased to delete penalty u/s 271(1)(c) by holding that there was no furnishing of inaccurate particulars of income nor there was concealment of income when the head of income to assess income was changed from business income to Income from House Property . We have also observed that the AO while framing assessment for AY 2002-03, 2004-05 to 2006-07 vide separate assessment orders for all these years all dated 29.10.2009 passed u/s. 143(3) r.w.s. 147 of the 1961 Act, has assessed the said income under the head 'income from house property' and statutory deduction u/s 24(1) towards Repairs and Maintenance was also allowed by the AO although the same was declared to be business income by the assessee in return of income filed for all these years ( refer page 75-82/pb). The assessee for impugned assessment year also declared the said rental income from sub-letting as income from house property and claimed deduction u/s 24(1) of the 1961 Act, so there was a bonafide belief on the part of the assessee in bringing to tax said income to tax under the head 'Income from house property' while filing return of income which led assessee to offer the said income under the head 'Income from house property' despite the fact that the assessee was not owner of the said property and consequential deduction u/s. 24(1) were also claimed by the assessee because reassessment proceedings for all these years AY 2002-03, 2004-05 to 2006-07 were underway when the assessee filed return of income for impugned assessment year viz. AY 2009-10 . No doubt since the assessee was not owner of the premises , the AO had a valid reason for changing head of income while making quantum assessment by bringing the said income chargeable to tax under the head 'Income from other sources' instead of being treated as 'Income from House Property' and consequential denial of deduction u/s 24(1) of the 1961 Act but merely because there was a change of head of income while assessing income , keeping in view factual matrix of the case , penalty u/s 271(1)(c) is not exigible as the assessee has bonafide belief that income is required to be offered to tax under the head

income of house property as the reassessment proceedings u/s 147 for AY 2002-03,2004-05 to 2006-07 started on 23.03.2009 when the AO issued notice u/s 148 of the 1961 Act to the assessee to bring to tax, rental income under the head 'Income from House Property' instead of business income as was declared by the assessee in all these years, which finally led to reassessment orders , all dated 29.10.2009 passed by the AO u/s 143(3) r.w.s. 147 of the 1961 Act bringing said income chargeable to tax under the head 'income from house property' for all the aforesaid assessment years . The assessee filed its return of income for impugned assessment year 2009-10 on 26.09.2009 wherein said income was declared as 'Income from House property' as the reassessment proceedings for AY 2002-03 , 2004-05 to 2006-07 were underway on 26.09.2009 (date when assessee filed return of income for impugned assessment year) wherein the Revenue was intending to bring to tax said income under the head 'Income from House Property', thus there was a bonafide reasons before the assessee to declare said income under the head 'Income from House Property' as the Revenue for earlier years were attempting to bring said income to be assessed as income from house property and the assessee was agreeing for earlier years for the said income to be assessed as income from house property during reassessment proceedings to avoid any further litigation with Revenue. Thus, obviously with a view to avoid litigation for the year under consideration, the assessee filed return of income on 26.09.2009 declaring rental income from sub-letting as income from house property despite the fact that the assessee being not owner of the said property. The explanation put forward by the assessee is bonafide which takes it out from the clutches of penalty provisions as are contained in Section 271(1)(c) of the 1961 Act , and we hereby order deletion of the penalty levied by the AO u/s. 271(1)(c) of the Act. Thus, on both the counts on merits penalty as levied by the AO u/s 271(1)(c) which was later confirmed by learned CIT(A) stood deleted. Since, we have already deleted the penalty levied by the AO u/s 271(1)(c) of the 1961 Act which was later confirmed by learned CIT(A)

on both the counts on merits, the other grounds raised by the assessee in its appeal has become academic and we are not inclined to decide the same. We order accordingly.

10. The appeal of the assessee in ITA No. 1290/Mum/2017 for AY 2009-10 is allowed as indicated above

Order pronounced in the open court on 01.05.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 01.05.2019 को की गई

Sd/-

(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 01.05.2019

*Nishant Verma*  
*Sr. Private Secretary*

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI