

No penalty leviable unless the conduct of the assessee is found to be contumacious

In *M/s. Aanya Real Estate Pvt. Ltd. v. Deputy CIT [IT A No. 115/Mum/2020 decided on July 20, 2021]* M/s. Aanya Real Estate Pvt. Ltd. (“the Appellant”) is a real estate company. During assessment, it was noted that the Petitioner had disclosed payment for Exchange Server Services as revenue expenditure instead of capital expenditure.

Subsequently, a show cause notice was issued under Section 274 of the Income Tax Act, 1961 (“the IT Act”) read with 271(1)(c) of the IT Act and penalty was levied. Upon Appellant’s appeal CIT(A) confirmed the penalty.

The Hon’ble Income Tax Appellate Tribunal, Mumbai relied on the exposition of Hon’ble Supreme Court in the case of *CIT v. Reliance Petro Products Pvt. Ltd. [(2010) 322 ITR 158 (SC)]* and held that the Appellant’s claim of payment being revenue expenditure, by no stretch of imagination can be said to be ex-facie bogus. Thus, a disallowance of the same cannot lead to the conclusion that the Appellant is guilty of furnishing of inaccurate particulars of income or concealment of income.

Further, stated that an authority may not levy penalty unless the conduct of the Appellant is found to be contumacious [*Hindustan Steel Ltd. vs. State of Orissa [(1972) 83 ITR 26 (SC)]*].

Allowed Appellant’s appeal.

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