Bombay High Court Ito vs Roborant Investments (P.) Ltd. on 14 December, 2005 Equivalent citations: 2006 7 SOT 181 NULL ORDER D.K. Srivastava, A.M. The appeal filed by the department is directed against the order of the learned Commissioner (Appeals) ("Commissioner (Appeals)" in short) on the following grounds: "On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) had erred in deleting penalty of Rs. 9,86,733 levied under section 271 (1)(c) of the Income Tax Act, 1961" 2. Briefly stated, the facts of the case are that the assessee had filed its return of income before the assessing officer ("assessing officer" in short) declaring NIL income. It was taken up for scrutiny by the assessing officer as a result of which the assessment was completed under section 143(3) determining the total income at Rs. 8,54,750 which, inter alia, included rental income of Rs. 9,00,000. The assessing officer assessed the said rental income as income from house property whereas the assessee had shown the same as service charges under the head "Income from business". The assessee carried the matter in appeal against the aforesaid order of the assessing officer before the Commissioner (Appeals) who decided the matter against the assessee. The assessee did not file any appeal against the order of the learned Commissioner (Appeals). Thus taxability of service charges as rental income under the head "Income from house property" has become final. 2. Briefly stated, the facts of the case are that the assessee had filed its return of income before the assessing officer ("assessing officer" in short) declaring NIL income. It was taken up for scrutiny by the assessing officer as a result of which the assessment was completed under section 143(3) determining the total income at Rs. 8,54,750 which, inter alia, included rental income of Rs. 9,00,000. The assessing officer assessed the said rental income as income from house property whereas the assessee had shown the same as service charges under the head "Income from business". The assessee carried the matter in appeal against the aforesaid order of the assessing officer before the Commissioner (Appeals) who decided the matter against the assessee. The assessee did not file any appeal against the order of the learned Commissioner (Appeals). Thus taxability of service charges as rental income under the head "Income from house property" has become final. 3. While completing the said assessment, the assessing officer had initiated the penalty proceedings under section 271(1)(c) of the Income Tax Act. After hearing the assessee in the matter, the assessing officer levied the impugned penalty on the ground of failure on its part to offer the service charges/rental income for tax under the head "Income from House Property". 3. While completing the said assessment, the assessing officer had initiated the penalty proceedings under section 271(1)(c) of the Income Tax Act. After hearing the assessee in the matter, the assessing officer levied the impugned penalty on the ground of failure on its part to offer the service charges/rental income for tax under the head "Income from House Property". 4. On appeal against the said penalty order, the learned Commissioner (Appeals) cancelled the penalty with the observations that taxability of income under the head "Income from House Property" or "Income from business" was a debatable issue. The department is aggrieved by the aforesaid order of the learned Commissioner (Appeals) and is now in appeal before the Tribunal. 4.

On appeal against the said penalty order, the learned Commissioner (Appeals) cancelled the penalty with the observations that taxability of income under the head "Income from House Property" or "Income from business" was a debatable issue. The department is aggrieved by the aforesaid order of the learned Commissioner (Appeals) and is now in appeal before the Tribunal. 5. In support of appeal, the learned Departmental Representative submitted that the rental income was offered by the assessee under the head "Income from business" as against which the assessing officer taxed it under the head "Income from House Property". According to him, the assessee had accepted the taxability of rental income under the head "Income from House Property" which was evident from the fact that the assessee itself did not file any appeal against the order of the learned Commissioner (Appeals) confirming the taxability of impugned income under the head "Income from House Property". The learned departmental Representative pointed out that the case of assessee was squarely covered by Explanation I to section 271(1)(c) of the Income Tax Act which the learned Commissioner (Appeals) failed to consider while disposing off the appeal filed by the assessee. He submitted that the learned Commissioner (Appeals) should have confirmed the levy of penalty in view of the following decisions. 5. In support of appeal, the learned Departmental Representative submitted that the rental income was offered by the assessee under the head "Income from business" as against which the assessing officer taxed it under the head "Income from House Property". According to him, the assessee had accepted the taxability of rental income under the head "Income from House Property" which was evident from the fact that the assessee itself did not file any appeal against the order of the learned Commissioner (Appeals) confirming the taxability of impugned income under the head "Income from House Property". The learned departmental Representative pointed out that the case of assessee was squarely covered by Explanation I to section 271(1)(c) of the Income Tax Act which the learned Commissioner (Appeals) failed to consider while disposing off the appeal filed by the assessee. He submitted that the learned Commissioner (Appeals) should have confirmed the levy of penalty in view of the following decisions. (i) Shirish R. Shah v. Assistant Commissioner (2004) 114 Taxman 33 (Mag.) (ii) K. P. Madhusudhanan v. CIT (2001) 251 ITR 99 (SC). 6. In reply, the learned Authorised Representative for the assessee supported the order of the learned Commissioner (Appeals). He submitted that the issue of taxability of income under the head "Income from business" or "Income from House Property" was a debatable issue. According to him, the assessee entertained a bona fide belief that the impugned income was chargeable to tax as income from business and hence penalty under section 271(1)(c) was not leviable on account of mere difference with regard to the head of income under which it was taxable. He relied on the decision of the Hon'ble Rajasthan High Court in CIT v. Hotel Ratanada International (P.) Ltd. (2004) 135 Taxman 523 for the proposition that treatment of rental income as "Income from House Property" or "Income from business" was a question of law. 6. In reply, the learned Authorised Representative for the assessee supported the order of the learned Commissioner (Appeals). He submitted that the issue of taxability of income under the head "Income from

business" or "Income from House Property" was a debatable issue. According to him, the assessee entertained a bona fide belief that the impugned income was chargeable to tax as income from business and hence penalty under section 271(1)(c) was not leviable on account of mere difference with regard to the head of income under which it was taxable. He relied on the decision of the Hon'ble Rajasthan High Court in CIT v. Hotel Ratanada International (P.) Ltd. (2004) 135 Taxman 523 for the proposition that treatment of rental income as "Income from House Property" or "Income from business" was a question of law. 7. We have heard the parties and considered their submissions. The short question in this appeal is whether penalty can be levied on the basis of mere difference of opinion on matters of law regardless of the fact that an assessee has made full disclosure of all the facts material to the computation of income in the return of income and the statements accompanying the return and also acted bona fide in doing so. As rightly observed by the learned Commissioner (Appeals) in his order, there is no allegation in the present case that the assessee has concealed any material particular of its income. It is also not the case of the assessing officer that rental income was not shown by the assessee. On the other hand, the finding recorded by the learned Commissioner (Appeals) shows that the assessee had made full and complete disclosure of all the facts relating to the computation of its total income. The only point on which there was a difference between the assessee and the assessing officer was the head of income under which the service charge/rental income was taxable. Simply because a legal view taken by the assessee was not accepted by the assessing officer would not necessarily mean that there was concealment of income on the part of the assessee within the meaning of section 271(1)(c). 7. We have heard the parties and considered their submissions. The short question in this appeal is whether penalty can be levied on the basis of mere difference of opinion on matters of law regardless of the fact that an assessee has made full disclosure of all the facts material to the computation of income in the return of income and the statements accompanying the return and also acted bona fide in doing so. As rightly observed by the learned Commissioner (Appeals) in his order, there is no allegation in the present case that the assessee has concealed any material particular of its income. It is also not the case of the assessing officer that rental income was not shown by the assessee. On the other hand, the finding recorded by the learned Commissioner (Appeals) shows that the assessee had made full and complete disclosure of all the facts relating to the computation of its total income. The only point on which there was a difference between the assessee and the assessing officer was the head of income under which the service charge/rental income was taxable. Simply because a legal view taken by the assessee was not accepted by the assessing officer would not necessarily mean that there was concealment of income on the part of the assessee within the meaning of section 271(1)(c). 8. At the time of hearing, the learned Departmental Representative submitted that the assessing officer was right in imposing the impugned penalty in view of Explanation 1 to section 271(1)(c) as interpreted by the Hon'ble Supreme Court in K.P. Madhusudhanan's case (supra). We have carefully perused Explanation 1 as also the said judgment. Explanation 1 has two clauses, namely, clause (A)

and clause (B). Clause (A) applies where a person fails to offer an explanation or offers an explanation, which is found to be false while clause (B) applies where a person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him. If a case falls under any of the aforesaid clauses of Explanation 1, then the amount added or disallowed in computing the total income as a result thereof is deemed to represent the income in respect of which particulars have been concealed. In the case before us, the assessee did offer an explanation before the assessing officer and it is not the case of the assessing officer that the explanation so offered by the assessee was false. The case of the assessee, therefore, does not fall under clause (A). As regards the applicability of clause (B), we find that the assessee before us had disclosed all the facts relating to the computation of its total income before the assessing officer. It was a debatable issue as to whether the rental income/service charge was assessable as income from business or income from house property. The assessee, instead of giving up its claim, preferred to argue before the departmental Authorities that the said income was assessable as income from business. The assessee was entitled in law to say so. The fact that the view canvassed by the assessee before the assessing officer was not accepted does not ipso facto give rise to concealment of income. Penalty under section 271(1)(c) is levied for concealment of income and not for the difference in taking legal views on a given set of facts provided the facts have been adequately disclosed. Fiction under Explanation 1 to section 271 (1) is available in respect of the amount added or disallowed while computing the total income and not for taxing the same income under a head of income different from the one under which it was offered by the assessee. The case of the assessee, in our humble view, neither falls under clause (A) or clause (B) nor otherwise comes within the deeming provisions of Explanation 1 to section 271(1)(c). 8. At the time of hearing, the learned Departmental Representative submitted that the assessing officer was right in imposing the impugned penalty in view of Explanation 1 to section 271(1)(c) as interpreted by the Hon'ble Supreme Court in K.P. Madhusudhanan's case (supra). We have carefully perused Explanation 1 as also the said judgment. Explanation 1 has two clauses, namely, clause (A) and clause (B). Clause (A) applies where a person fails to offer an explanation or offers an explanation, which is found to be false while clause (B) applies where a person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him. If a case falls under any of the aforesaid clauses of Explanation 1, then the amount added or disallowed in computing the total income as a result thereof is deemed to represent the income in respect of which particulars have been concealed. In the case before us, the assessee did offer an explanation before the assessing officer and it is not the case of the assessing officer that the explanation so offered by the assessee was false. The case of the assessee, therefore, does not fall under clause (A). As regards the applicability of clause (B), we find that the assessee before us had disclosed all the facts re-

lating to the computation of its total income before the assessing officer. It was a debatable issue as to whether the rental income/service charge was assessable as income from business or income from house property. The assessee, instead of giving up its claim, preferred to argue before the departmental Authorities that the said income was assessable as income from business. The assessee was entitled in law to say so. The fact that the view canvassed by the assessee before the assessing officer was not accepted does not ipso facto give rise to concealment of income. Penalty under section 271(1)(c) is levied for concealment of income and not for the difference in taking legal views on a given set of facts provided the facts have been adequately disclosed. Fiction under Explanation 1 to section 271 (1) is available in respect of the amount added or disallowed while computing the total income and not for taxing the same income under a head of income different from the one under which it was offered by the assessee. The case of the assessee, in our humble view, neither falls under clause (A) or clause (B) nor otherwise comes within the deeming provisions of Explanation 1 to section 271(1)(c). 9. The learned Departmental Representative has strongly relied upon the decision of the Hon'ble Supreme Court in K.P. Madhusudhanan case (supra) and contended that the impugned penalty was rightly imposed by the assessing officer on the facts of the case. We may, at this stage fruitfully reproduce the relevant portion of the judgment in that case which reads as under: 9. The learned Departmental Representative has strongly relied upon the decision of the Hon'ble Supreme Court in K.P. Madhusudhanan case (supra) and contended that the impugned penalty was rightly imposed by the assessing officer on the facts of the case. We may, at this stage fruitfully reproduce the relevant portion of the judgment in that case which reads as under: "... The Explanation to section 271(1)(c) is a part of section 271. When the Income Tax Officer or the Appellate Assistant Commissioner issues to an assessee a notice under section 271, he makes the assessee aware that the provisions thereof are to be used against him. These provisions include the Explanation. By reason of the Explanation, where the total income returned by the assessee is less than 80 per cent of the total income assessed under section 143 or 144 or 147, reduced to the extent therein provided, the assessee is deemed to have concealed the particulars of his income of furnished inaccurate particulars thereof, unless he proves that the failure to return the correct income did not arise from any fraud or neglect on hispart. The assessec is, therefore, by virtue of the notice under section 271 put to notice that if he does not prove, in the circumstances stated in the Explanation, that his failure to return his correct income was not due to fraud or neglect, he shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars thereof and consequently, be liable to the penalty provided by that section. No express invocation of the Explanation to section 271 in the notice under section 271 is, in our view, necessary before the provisions of the Explanation therein are applied. The High Court at Bombay was, therefore, in error in the view that it took and the Division Bench in the impugned judgment was right." (Emphasis supplied) The aforesaid judgment, in our view, supports the case of the assessee more than the case of the department. There is nothing in the said judgment to suggest that the penalty

under section 271(1)(c) should be levied by invoking Explanation 1 thereto in each case where there is addition or disallowance. 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 assessing officer 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 assessing officer are clearly outside the scope of Explanation 1 to section 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 Commissioner (Appeals) has correctly cancelled the impugned penalty. His order is, therefore, confirmed. 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 assessing officer 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 assessing officer are clearly outside the scope of Explanation 1 to section 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 Commissioner (Appeals) has correctly cancelled the impugned penalty. His order is, therefore, confirmed. 11. Appeal filed by the department is dismissed. 11. Appeal filed by the department is dismissed.