

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।

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

श्री डि. करुणाकर राव, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 4835/Mum/2012

(Assessment year :2008-09)

M/s Gyanshankar Investments & Trading Co Pvt Ltd, 1601, Marathon heights, P B Marg, Lower Parel, Mumbai -400 013 स्थयी लेखा सं.: PAN: AABCG 3362 R	Vs	Asst. Commissioner of Income Tax -Circle -9(1), 2 nd Floor, Room No. 229, Aayakar Bhavan, M K Road, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Mitesh Shah
Respondent by	:	Shri S T Bidari

सुनवाई की तारीख /Date of Hearing : 14-07-2015

घोषणा की तारीख /Date of Pronouncement : 15-10-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order dated 21.05.2012 passed by CIT(A)-19, Mumbai, in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2008-09.

2. The assessee is mainly aggrieved by levy of penalty of Rs. 30,23,839/- on account of claim of deduction of Rs. 90,55,129/- on account of cost of improvement from short-term-capital-gain.

3. The brief facts of the case are that, the assessee claimed interest expenses of Rs. 90,55,129/- against short-term-capital-

gain on sale of shares and mutual funds. In response to the show cause notice, the assessee submitted that the same is allowable as cost of acquisition u/s 48, as interest has been paid to the broker on account of delay of payment of purchase consideration which is directly related to purchase of shares. In support of this contention, assessee had relied upon the decision of Karnataka High Court in the case of CIT vs Sri Hariram Hotels (P) Limited, reported in 325 ITR 136. However, the Ld. AO disallowed the said claim of interest expenses on the ground that same is not allowable. In response to the show cause notice, in the penalty proceedings, assessee again filed a very detailed explanation/submissions justifying the claim of deduction of interest of Rs. 90,55,129/- from short-term-capital-gain of Rs. 17,30,19,129/- on sale of shares on the strength of judicial decisions. However, the Ld. AO rejected the assessee's contention and levied the penalty. In the first appeal, the Ld. CIT(A) too confirmed the said penalty after discussing various judicial decisions on laws relating to penalty.

4. Before us, the Ld. Counsel has submitted that assessee's claim was based on certain judicial decisions and without pointing out any factual differences in the ratio of such decisions, the penalty should not be levied even if the assessee has not filed any appeal against the said disallowance, it does not mean that assessee's claim was not *bona fide*, as it was based on various High Court decisions at the time of filing of return of income.

5. Whereas, the Ld. DR relied upon the order of the CIT(A).

6. After considering the rival submissions and on perusal of the relevant finding given in the impugned order, we find that penalty has been levied on account of claim of interest expenses paid to a broker on account of delay in payment of purchase while computing the short-term-capital-gain. At the time of making the claim, the assessee had referred to following various court

decisions, wherein the interest on borrowing for purchase of shares were treated as part of cost while computing the capital gain on sale of shares :-

CIT vs Shri Hariram Hotels Pvt Ltd	325 ITR 136 (Karn)
CIT vs Maithreyi Pai	152 ITR 247 (Karn)
CIT vs Mithlesh Kumari	92 ITR 9
Addl. CIT vs K S Gupta	119 ITR 372
Naozar Chenoy vs CIT	234 ITR 95

Thus assessee's claim was well supported by the decisions of Karnataka High Court in the case of CIT vs Maithreyi Pai (152 ITR 147) and Sri Hariram Hotels (P) Limited (*supra*). It is not the case that the assessee had made any untenable claim in law or has furnished any inaccurate particulars of income. If the assessee's claim at the time of filing of return of income was *bona fide* based on certain legal proposition, then it cannot be said that penalty is to be levied u/s 271(1)(c). Hon'ble Supreme Court in the case of Reliance Petro Products (reported in 322 ITR 158) has gone to the extent that, mere making of a claim, which is unsustainable in law would not amount to furnishing of inaccurate particulars of income. Thus, on these facts we hold that penalty levied by the AO and confirmed by the CIT(A) cannot be sustained and hence, penalty on this score stands deleted.

7. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on 15th October, 2015.

Sd/-

(डि. करुणाकर राव)

लेखा सदस्य

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-

(अमित शुक्ला)

न्याईक सदस्य

(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 15th October, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -19, Mumbai.

- 4) The CIT -9, Mumbai.
- 5) विभागीय प्रतिनिधि "जी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
- 6) गार्ड फाईल \\
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आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हाण व.नि.स

*Chavan, Sr.PS