

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

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.1500/M/2012
Assessment Year: 2003-04**

M/s. Veena Sureshkumar Shah, 79/B, Adinath Co-op. Housing Soc., Mazgaon, Byculla (East), Mumbai – 400 010 PAN: ABPPS7018G	Vs.	Income Tax Officer, 17(1)(2), Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri M.B. Sanghvi, A.R.
Revenue by : Shri Sanjeev Kashyap, D.R.

Date of Hearing : 29.12.2015
Date of Pronouncement : 29.12.2015

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 24.11.2009 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2003-04.

2. The assessee has agitated the confirmation of levy of penalty of Rs.51,517/- under section 271(1)(c) of the Act. The brief facts of the case are that the Assessing Officer (hereinafter referred to as the AO) disallowed the interest expenditure of Rs.1,88,386/- out of the total claim of interest expenditure of Rs.2,76,130/- on the ground that the assessee had paid interest on overdraft/loans at a higher rate whereas the assessee had given loan at lower rate of interest. The matter travelled to the Tribunal and the Tribunal vide order dated 20.07.07 held that the assessee was entitled to netting of the interest, however it was directed that in respect of money borrowed at higher rate of interest and given by way of loan at a lower rate of interest, excess

interest payment be disallowed. The AO, while giving effect to the order of the ITAT, disallowed an amount of Rs.2,36,635/- in this respect. However, in the meanwhile the AO imposed penalty on account of the disallowance of interest vide order dated 27.12.06 i.e. before the passing of the order of the Tribunal.

3. The Ld. CIT(A), taking into consideration the order of the Tribunal in the quantum appeal, held that since the disallowance of interest expenditure has been upheld by the Tribunal, hence penalty under section 271(1)(c) of the Act has been rightly imposed.

4. From the perusal of the impugned order, we find that neither it is a case of furnishing of inaccurate particulars of income nor of concealment of income. It is a simple case of disallowance of interest expenditure on the ground that the assessee had given interest at a lower rate of interest. Though the Ld. A.R. of the assessee has explained that the borrowed funds were not used for giving loan rather the own funds of the assessee were used, however without going into the merits of the above contention, we find that it is a case of simple disallowance of interest expenditure. It is neither a case of furnishing of any inaccurate particulars of income nor of concealment of income. Hence, the penalty under section 271(1)(c) of the Act is not attracted in this case. In view of the above, the penalty so levied by the lower authorities is hereby ordered to be deleted.

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

Order pronounced in the open court on 29.12.2015.

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 30.12.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.