

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "E" BENCH NEW DELHI)**

BEFORE SHRI G.D. AGRAWAL, PRESIDENT

&

SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA Nos. 4002-4006/Del/2014

**Assessment Years: 2005-06, 2006-07, 2007-08, 2008-09-
2009-10**

Mata Vaishno Estates, C/o. Parvesh Kumar Sharma, Income Tax Advocate 493-L, Model Town, Karnal	Vs.	ITO Ward-2, Karnal
(Applicant)		(Respondent)
(PAN: AAKFM5237D)		

Assessee by: Shri Gurjeet Singh, CA
Shri Rakesh Jain, Advocate
Revenue by: Shri S.K. Dubey, Sr, DR

Date of hearing	20/06/2017
Date of pronouncement	11/07/2017

ORDER

PER: AMIT SHUKLA, JM:

The aforesaid appeals have been filed by the assessee against common impugned orders dated 2.12.2013, passed by the Ld. CIT (Appeals)-Karnal, in relation to the penalty proceedings u/s 271(1)(c) for the A.Ys. 2005-06, 2006-07, 2007-08, 2008-09-2009-10. Since the common issues were involved in all the appeals arising out of the identical set of facts, therefore, the same were heard together and are being disposed off by way of this consolidated order.

2. The assessee is aggrieved by levy of penalty u/s 271(1)(c) on disallowance of interest paid to partners. The penalty levied in respect of disallowances made in the assessment years before us as under:-

Assessment year	Disallowance of interest (Rs.)	Penalty levied (Rs.)
2005-06	350477	127449
2006-07	575130	193588
2007-08	986963	332210
2008-09	1328693	410565
2009-10	1590242	453959

3. The brief facts apropos the issues are that the assessee is a partnership firm which has shown income from house property in its return of income. From the said income the assessee had claimed statutory deduction of 30% on account of repairs and had also claimed deduction u/s 24(b) on interest paid to bank and others. Apart from that it has also claimed interest paid to the partners on their capital in terms of the partnership deed u/s 40(b). During the course of assessment proceedings, the assessee was show caused as to why such an interest paid to the partners should be allowed when the assessee is not having any business income. In response, the assessee submitted that in terms of partnership deed the interest has been paid to the partners @ 12% and therefore, it was entitled for claim of deduction of interest paid to the partners under the provision and section 40(b)(iv). The Assessing Officer held that since the assessee is receiving rental income from 'HAFED' from building owned by the firm and once the assessee itself has declared rental income under the head "income from house property" and also claimed deductions u/s 24, then it means that no deductions u/s 28

to section 44 was allowable. Therefore, interest payable on the partner's capital contribution and bank charges cannot be allowed. Accordingly, he made following disallowance in the various years:-

Assessment year	Disallowance of interest	Disallowance of bank charges
2005-06	350477	125
2006-07	524922	50208
2007-08	938987	47976
2008-09	1283798	44895
2009-10	1573723	16519

4. In the quantum proceedings, the said disallowance stands confirmed either by CIT (A) or by the ITAT, especially in the A.Y. 2007-08 wherein the Tribunal in ITA No. 1486/Del/2011, vide order dated 31.5.2011 has confirmed the disallowance of interest. One of the plea taken by the assessee in the quantum proceedings at the appellate forum was that the partner's capital was also used for the purpose of purchase of property, hence deduction should be allowed u/s 24(b) on the interest paid to the partners. However such a plea appears to have not been accepted, because an observation has been made by the Tribunal that the nexus between amount borrowed from the partners and purchase of property could not be established. Thus, the disallowance of interest made in the assessment order stands confirmed either by the Tribunal or in some of the years the assessee did not preferred any appeal. Now the penalty has been levied on the aforesaid disallowances mainly on the ground that the assessee was not entitled to claim interest paid to the partners as the provisions of the Income Tax Act does not authorize the payment of such interest against income from house property. The reliance placed on the decision and judgment of the Hon'ble Supreme Court

in the case of **CIT vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158**, was not accepted by the Assessing Officer on the ground that it was distinguishable on facts. Here in this case the penalty has been levied on the ground that the assessee has made inaccurate claim of interest, therefore, the penalty should be levied for furnishing of inaccurate particulars of income.

5. The Learned CIT (Appeals) mainly relying upon the findings given in the quantum proceedings has confirmed the penalty.

6. Before us, the ld. counsel for the assessee submitted that in terms of the Partnership Deed the assessee was required to pay the interest to the partners on the rates prescribed in the said deed. He further submitted that allowability of interest should be allowed u/s 24(b) as the Partner's capital has been utilized for acquisition of property from where assessee has declared income from house property. To prove his contention, he was required to furnish copy of balance sheet, which was duly filed by him subsequently. He also filed following compilation of judgments wherein similar on issue the interest paid to the partners have been allowed u/s 24(b).

1. *Mata Vaishno Estates ITAT Delhi order dt. 31.05.2011 in ITA No. 1486/D/2011 for AY 2007-08;*
2. *Delhi Industries & Enterprises & others Vs ACIT (2011) 30 CCH 0664 (Delhi Tb);*
3. *CIT vs. Sane Doshi Enterprises, Bombay HC in ITA No. 375 of 2013;*
4. *Siroya Holdings Vs Adi CIT ITAT Mumbai order in in ITA No/ 5901/Mum/2013 ;*
5. *Kachhawaha Rameshwar Singh Vs ITO (2014) 40 CCH 0023 Jodh Tb.*

7. After relying upon these decisions, he submitted that if on similar issues there are favorable decisions it can very well said that the claim made by the assessee was bona fide claim and there is a possible view, therefore, no penalty can be levied on such a disallowance. In support he relied upon the decision of Hon'ble High Court in the case of so and so reported in **360 ITR page 121 (P&H) CIT vs. Rajiv Bhatana.**

8. On the other hand the ld. DR submitted that it is an undisputed fact that the assessee has shown 'income from house property' and is also claiming payment of interest paid to Partners u/s 40(b)(iv) which cannot be allowed as the same is allowable only when income is computed under the head business and profession. Such a claim of interest paid to the partners and later on claiming deduction u/s 24(b) is unsustainable in law and is false claim therefore, same should not be allowed. In the quantum proceedings there has been a categorical finding that the assessee could not correlate the loan from the partners for the acquisition of the house property. Thus, such a disallowance of bogus claim definitely entails levy of penalty for furnishing of inaccurate particulars u/s 271(1)(c). In support of his contention, he strongly relied upon in the Hon'ble Delhi High Court in the case of CIT vs. Escort Finance Ltd. judgment and order dated 24.8.2009 in ITA No. 1005/2008 and in the case of **CIT vs. Zoom Communications Pvt. Ltd. 2010 370 ITR 510.**

9. We have the rival submissions and perused the relevant findings given in the impugned order as well as materials referred to before us. The assessee is a partnership firm and declared its income from rent from HAFED. The said rental income has been shown

under the head “income from house property”. From the said rental income, assessee after claiming statutory deductions u/s 24(a) has also claimed deduction of interest u/s 24(b) on the interest paid on borrowed capital. Apart from claiming interest paid to bank and others, the assessee has also claimed deduction on interest paid to partners on the ground that under the Partnership Deed it was required to pay the interest to the partners on their capital contribution and such interest is allowable in terms of provision u/s 40(a)(b)(iv). In the quantum proceedings as well as during penalty proceedings the assessee has claimed that the interest paid to the Partners should be alternatively be allowed u/s 24(b) as the capital of the partners have utilized for acquisition of the property. Such a disallowance stands confirmed in the quantum proceedings up till stage of the Tribunal in the same years. Though in quantum proceedings the disallowance stands confirmed, however in the penalty proceedings which is a separate and distinct from the assessment proceedings, one has to examine, whether such a claim made by the assessee was either bona fide or not at the time of filing of return of income; or whether such a claim is bogus or completely unsustainable in law. If the assessee is able to demonstrate that it has furnished all the particulars of the income and claim made by him in the return of income is bona fide based on either material on record or any judicial opinion, then such a claim cannot tantamount to furnishing of inaccurate particulars. We have to see whether the assessee’s claim of interest paid to the partners can be held to be allowable or is unsustainable in law. Here one of the plea taken by the Ld. DR was that assessee has been unable to show that Partners’ capital had been utilized for the acquisition of the property. In response to such a plea the ld. counsel had submitted that the only

asset/property owned by the firm is the same property from which the assessee firm is earning rental income. In support copy of balance sheet has been filed. On perusal of the balance sheet it is seen that assessee has shown Partners' capital at Rs. 1,07,00,111/-; secured loan from CBI term loan of Rs. 63,55,691/-; and unsecured loan of Rs. 8,83,870/-, aggregating to Rs. 1,79,39,672/-. As against this, assessee has shown fixed asset of land and building at Rs. 1,44,29,455/- from where assessee is earning rental income. Apart from that other current assets are inform of security to HAFED and FDR in CBI of Rs. 23,65,600/-. This goes to show that the most of the capital of the partners have gone for acquisition of such an asset. Hence it can be inferred that the capital of the partners have been utilized for acquisition of asset. Under these circumstances it can be held that assessee may have some good case for claim of interest paid on such capital which is allowable u/s 24(b) while computing the income from house property. Thus, it cannot be held that the assessee's claim for allowability of interest on the partner's capital amounts to furnishing of inaccurate particulars.

10. Now on this point we shall refer to some of the decision and judgment relied upon by the ld. counsel in support of his contention that such a claim has been allowed by the Hon'ble High Court as well as by the certain Benches of the Tribunal. First of all, in the case of CIT vs. Sane Doshi Enterprises (supra), Hon'ble Bombay High Court, wherein one of the issues for consideration was that, whether the assessee's claim deduction u/s 24(b) for the interest paid to the partners on the capital which was utilized for the purchase/construction of the premises is allowable or not. The

relevant observation of the Hon'ble High Court in this regard reads as under:-

“.....If the entire interest paid on the partners' capital was related to the premises which were let out by the assessee but the construction thereof came from the contributions of the partners, then, the interest was due and payable to them. That interest was payable not only in terms of the general principle of partnership and highlighted in the Indian Partnership Act, 1932, but also on the broad consideration under section 24(b) of the Income Tax Act, 1961. If the income is income from house property and that is a deduction which could be granted from the same we do not think that the Revenue should be permitted to raise this ground.....”

In the case of M/s. Siroya Holdings, the ITAT Mumbai Bench was dealing with similar issues disallowance of interest u/s 24(b) with capital received from the partners, which was utilized in acquisition/construction of property. The Tribunal relying upon the decision of the Tribunal in the case of Sane Doshi Enterprises which has been affirmed by the Bombay High Court (as discussed above) and also some other decisions of the Tribunal decided the issue in favour of the assessee holding that such a claim of the assessee is allowable u/s 24(b).

11. In view of the above decisions it can be ostensibly inferred that, if the capital taken from the partners has been utilized for acquisition of a property from which income is assessed under the

head income from house property, then deduction of interest on such capital can be allowed u/s 24(b). If we apply the aforesaid proposition, then the assessee's claim though may not be allowable u/s 40(b)(iv) but definitely it can be considered for allowability u/s 24(b) while computing the income from house property. Otherwise also the Hon'ble Supreme Court, in the case of Reliance Petro Products (supra) held that mere submitting a claim which is incorrect in law would not amount the furnishing of inaccurate particulars of income. If the claim is bona fide and is duly supported by any judicial precedence then it can be held that such a claim falls within the realm of one of the possible view and on such a claim penalty cannot be levied. In the case of CIT vs. Zoom Communications Pvt. Ltd. as relied upon by the Hon'ble High Court, the Hon'ble High Court too has held as under:-

“19. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, Explanation 1 to Section 271(1) would come into play and work to the disadvantage of the assessee.”

12. Here in this case, the assessee's claim cannot be said to be malafide as the claim was based on fact that the capital contributed by the partners have been utilized for acquisition of asset from which income has been earned therefore such a claim can be held to be allowable. Thus, in view of the aforesaid reasoning given above we hold that the assessee cannot be held to be furnishing of inaccurate particulars of income, the penalty levied in all the appeals directed to be deleted.

13. In the result, all the appeals of the assessee in all the years is allowed.

Order pronounced in the open court on 11.07.2017.

**Sd/-
(G.D. AGRAWAL)
(PRESIDENT, ITAT)**

**Sd/-
(AMIT SHUKLA)
(JUDICIAL MEMBER)**

Dated: 11.07.2017

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Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT (Appeals)
- 5) DR: ITAT

ASSISTANT REGISTRAR

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