SURYAIN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No.209/DEL/2016
Assessment Year:2009-10

Krishan Kumar Basia SU-217, Pitampura New Delhi	v.	DCIT Central Circle 5 New Delhi
TAN/PAN:AAFPB5927L		
(Appellant)		(Respondent)

Appellant by:	Shri Rajiv Saxena, Advocate		
Respondent by:	Shri Atiq Ahmad, D.R.		
Date of hearing:	30	10	2017
Date of pronouncement:	30	10	2017

O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against impugned order dated 17/11/2015, passed by the ld. CIT(Appeals)-23, New Delhi in relation to the penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 for assessment year 2009-10.

2. The assessee is mainly aggrieved by the levy of penalty under section 271(1)(c) on the disallowance of interest paid by the assessee. The relevant grounds raised by the assessee read as under:-

> *1. That on the fact and circumstances of the case the Ld. CIT(A)-XXIII has grossly erred in confirming the penalty levied u/s 271(1)(c) of the Act. It is illegal because;*

a) That the purchase of the Plot at Kundli was made out of the own funds of the assessee, the Ld. CIT(A) while adjudicating quantum appeal of the assessee has not considered this fact, and inspite of giving the table showing the own funds invested in the business vis-a-vis purchase of the plot at Kundli, the Ld. CIT(A) upheld the order of the A.O.

b) That the Ld. CIT(A) while adjudicating the appeal filed against the imposition of the concealment penalty has held that the interest paid by the assessee on the borrowed funds was to be capitalized, whereas the contentions of the assessee that no borrowed funds were used for the purchase of the plot was against disregarded and the penalty was confirmed which is against the facts and law, hence liable to be deleted.

c) Mere not agreeing with the submissions of the Assessee does not per se amounts to inaccurate and wrong particulars as has been held by Ld. CIT(A).

3. At the outset, the ld. counsel for the assessee submitted that on similar disallowance of interest, penalty was levied in the case of the assessee in assessment year 2008-09 also; wherein the Tribunal has deleted the said penalty vide order dated 20/01/2016 passed in I.T.A. No 5801/DEL/2015.

4. On the other hand, the ld. D.R. relied upon the orders of the Assessing Officer and the ld. CIT(A).

5. The brief facts qua the issue of disallowance of interest are that the assessee has debited interest amounting to Rs.61,04,883/-. The Assessing Officer, from the perusal of the bank loans and unsecured loans, noted that substantial amount of interest has been put to use for the purpose other than business, such as acquiring fixed assets like investment in plot

with TDI. He has also noted down the payments to TDI at page 2 of the assessment order. He also noted that similar loans were taken from banks and investment was made in plot with TDI which in the earlier years was not considered to be for the purpose of business. The assessee's submission in this regard before the Assessing Officer was that the amount invested in plot at TDI has been shown as fixed asset in the balance sheet and since the said property was under development, it could not be used for the business purposes and no depreciation has been claimed on the said property. As per Delhi Master Plan 2021, all the stainless pickling industries will have to shift their unit outside Delhi, therefore, assessee planned to shift the factory to Kundli and for the sake of convenience, assessee needed some space for godown near to the factory and that is why assessee had made investment in this plot at Kundli which was intended to be used for the business purpose. The Assessing Officer held that assessee could not furnish any detail whether location of the plot at TDI has been used for the purpose of godown and whether assessee has shifted the factory from Delhi, because assessee was still having its old address and has not shifted the same. Otherwise also, he held that the amount of interest paid on funds utilized for making payment to TDI against purchase consideration of plot cannot be held as Revenue expenditure; albeit it is to be capitalized with the cost of the plot. Accordingly, he held that it is capital expenditure and he calculated the disallowance of interest @ 13% in the following manner:-

"Interest on investment with TDI	*889850/-*
Interest recoverable on investment with TDI	*440050/-*
Net interest payments	*449800/-* *A*

Interest payment on unsecured loans utilized for property raised in preceding previous year on amount of Rs.7144516/- @ 13% 928787/- B

Total interest payment on funds not utilized for the business purpose: A+B = 449800 + 928787 = 1378587/-"

Accordingly, addition of Rs.13,78,587/- was made by the Assessing Officer, on which penalty has been levied and confirmed by the ld. CIT(A).

6. We find that similar penalty was confirmed in earlier year also by the revenue authorities, wherein the Tribunal (supra) has deleted the penalty after observing and holding as under:-

"5. We have perused the records placed before us, the orders passed by the authorities below and the decisions relied upon by the Id. A.R in the paper book filed. It is noted that the addition on which penalty in dispute has been imposed is purely a disallowance of expenses made by the Assessing Officer. The Assessing Officer was of the opinion that the expenses incurred by the assessee towards payment of interest for the purpose of acquiring a fixed asset should be capitalized and added to the cost of the fixed asset till the time the same is put to use, whereas the appellant had claimed this amount of interest paid as Revenue expenditure while capitalized the investment in the said plot as fixed asset. Mere disallowance of an expense does not attract penalty u/s 271(l)(c) of the Act. There is plethora of cases, whereby a view has been taken by the Hon'ble High Courts, including Apex Court that disallowance of expenses does not attract penal provisions.

5.1. It is an admitted position in the present case that no information given in the return was found to be incorrect or

inaccurate. It is also not a case where any statement made or any detail supplied was found to be factually incorrect. Therefore, prima facie the assessee cannot be held guilty of furnishing inaccurate particulars. The Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products reported in 322 ITR 158, has held that incorrect claim in law, cannot be termed as filing of inaccurate particulars of such income.

5.2. In order to expose the assessee to the penalty, unless the case is strictly covered by the provisions of section 271(l)(c), penalty proceedings cannot be invoked. The Hon'ble Apex Court has held that by any stretch of imagination making an incorrect claim in law will not tantamount to furnishing of inaccurate particulars.

5.3. We, therefore, on the basis of the above discussions and findings, relying upon the decisions of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products (supra) allow ground no. 1 of the assessee's appeal."

7. Thus, following the judicial precedence of earlier year, which is applicable *mutatis-mutandis* on the facts of the present case also, we also direct for deletion of the penalty and accordingly, the appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 30th October, 2017.

Sd/-	Sd/-
[PRASHANT MAHARISHI]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED:30th October, 2017

JJ:3010

Copy forwarded to:

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3. CIT(A)
4. CIT
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