

of Rs.42,94,355/- being proportionate interest on interest-free advances for non-business purposes out of borrowed capital u/s 36(1)(iii) of the Act and Rs.4,00,000/- as personal expenses out of tour and travelling expenses and had initiated separately, penalty proceedings u/s 271(1)(c) of the Act. The Assessing Officer levied penalty of Rs.14,60,000/- being 100% of the tax sought to be evaded *qua* the aforesaid two disallowances. The CIT(A) has since deleted the levy of penalty on both the counts. Against such a decision of the CIT(A), Revenue is in further appeal before us.

3. At the time of hearing, the learned representative for the assessee pointed out that the quantum proceedings against the disallowance of proportionate interest and a portion of tour and travelling expenses has been decided in favour of the assessee by the Tribunal vide its order in ITA No. 441/Mum/2014 dated 18.08.2017 inasmuch as the disallowance out of interest expense has been deleted and the disallowance out of tours and travel expense has been set-aside and matter restored to the Assessing Officer for examination afresh. The learned representative also submitted that since the additions, on the basis of which the penalty has been levied u/s 271(1)(c), do not survive in view of the order of the Tribunal dated 18.08.2017 (*supra*), the impugned penalty does not survive.

4. The Id. DR did not oppose the factual matrix brought out by the learned representative for the assessee.

5. We have heard the rival submissions. We find that the additions on the basis of which the penalty proceedings were initiated do not survive in view of the order of the Tribunal dated 18.08.2017 (*supra*), therefore, the

impugned penalty levied u/s 271(1)(c) of the Act is not tenable. Thus, we uphold the ultimate decision of the CIT(A) in deleting the penalty, albeit on a different ground.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 22nd June, 2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 22nd June, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai