

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'B', CHANDIGARH**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.461 & 462/Chd/2018**

Assessment Years: 2009-10 & 2011-12

The Asstt. CIT  
Panchkula Circle,  
Panchkula

Vs.

M/s Panchkula Golf Club  
Sector-03, Panchkula

PAN No. AAAAP5757C

(Appellant)

(Respondent)

Assessee By :  
Revenue By : Sh. N.D. Gupta

Date of hearing : 18/07/2018  
Date of Pronouncement : 06/08/2018

**ORDER**

**PER BENCH:**

Both the above appeals have been filed by the Revenue against the order of the Ld. CIT(A), Panchkula dt. 15/02/2018.

2. Since the issues raised in both the above appeals are common therefore they are being disposed by way of this common order.

3. We shall take ITA No. 461/Chd/2018 as a lead case for deciding the issue in which following grounds has been raised:

1. Whether on the facts and circumstances of the case the Ld. CIT(A); has erred in allowing the appeal of the assessee and cancelled the penalty under section 271(1)(c) which is not correct because the assessee has deliberately furnished the inaccurate particular of its income.

2. It is prayed that the order of the Ld. CIT(A) be set-aside and that of the A.O. be restored.

4. Brief facts of the case are that the assessee filed its return of income for the A.Ys. 2009-10 and 2011-12 on 30.09.2009 and 30.03.2011 declaring Nil income. The AO completed assessment u/s 143(3) on 30.09.2016 and 30.11.2016 at an income of Rs.30,31,222/- and Rs.42,40,760/- after making addition of Rs.30,31,222/- and Rs.42,40,760/- on account of interest income. Thereafter, the AO imposed penalty u/s 271 (1 )(c) @ 100% of tax sought to be evaded, i.e. Rs.9,22,677/- and Rs. 11,80,015/- for the A.Ys.

2009-10 and 2011-12 for the default of furnishing inaccurate particulars of its income.

5. Before us, Ld. AR argued that the assessee is under the bonafide belief that interest income is covered within the 'principles of mutuality', and so claimed the exemption. Further, it was argued that the original return of income was filed by the assessee on 30.09.2009 and the issue of taxability of interest income was adjudicated by the Hon' ble Supreme Court in the case of Bangalore Club Vs. CIT 350 ITR 509 dated 14.01.2013 i.e. much after the date of filing of return of income. He also relied on the following judgments in favour of the assessee prior to decision of Hon 'ble **Supreme** Court,

i) Delhi HC- All India Oriental Bank of commerce Welfare Society [2003] 130 Taxman 5765 (Del.)

ii) Karnataka HC - Canara Bank Golden Jubilee Staff Welfare Fund [2009] 308 ITR 202 (Karri).

iii) Delhi HC- Standing Conference of Public Enterprises [2009] 319 ITR 179 (Del.)

6. The Ld. AR argued that this is not the case of deliberate furnishing of inaccurate particulars of income within the meaning of the Act as the assessee had disclosed details of interest income of Rs. 30,31,222/- and Rs. 42,40,760/- itself in the original return filed prior to receipt of notice u/s 148, which are material for the computation of income of the assessee. Further, from the schedule of return of income it is very clear that the assessee had declared interest income of Rs.31,31,222/- and Rs.42,40, 760/-for the A. Ys. 2009-10 and 2011-12 . However, reasons were recorded u/s 148 that assessee did not disclose fully and truly all necessary facts essential for his assessment by ignoring the undisputed fact that interest income was already declared by the assessee itself in the original return of income. Therefore, it cannot be said that there was deliberate concealment of income; hence penalty may please be deleted in view of the judgment . CIT Vs. Shaikh Hassan Hotels 178 Taxman 313.

7. Ld. DR relied on the penalty order passed by the Assessing Officer.

8. We have heard both the parties and perused the rationale given by the Ld. CIT(A) while deleting the penalty. The relevant part of the order of the Ld. CIT(A) is as under:

*"i) The appellant has duly declared the interest income earned in its original returns of income filed on 30.09.2009 (for A.Y. 2009-10) and 30.03.2011 (for A.Y. 2011-12) and claimed it exempt under the bonafide belief that interest income also falls within the 'Principle of Mutuality' alongwith surplus receipts from members being a mutual concern.*

*ii) On the date of filing of returns of income for both the assessment years under appeal, there were judgements of various High Courts in favour of appellant and therefore the issue was debatable as there were many conflicting judgements.*

*iii) The issue of taxability of interest income of mutual concerns was finally settled by the Apex Court subsequently on 14.01.2013 in the case of Bangalore Club Vs. CIT 350 ITR 509.*

*Thus, penalty u/s 271(1 )(c) for furnishing of inaccurate particulars of income cannot be levied when the details of the claim were furnished in the return and were before the AO and further, the issue was clearly a debatable one at the time of filing of return by - the appellant. The judgement of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Arisudana Spinning Mills (2010) 326 ITR 429 (P&H) are squarely applicable to the facts of the case."*

9. We have gone through material before us and find that there is no infirmity in the order of the Ld. CIT(A) based on the judgment cited above as well as the facts related to this case. Hence we hereby decline to interfere in the order of the Ld. CIT(A).

10. In the result, both the above appeals of the Revenue are dismissed.

Order pronounced in the open Court.

**Sd/-**  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated : 06/08/2018  
AG

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR