

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, 'B', CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य**  
**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND**  
**Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 677/CHD/2016**

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Preet Land Promoters & Developers Pvt Ltd., Vill Nanu Majra Sector 86, Mohali	Vs. बनाम	The DCIT, Circle-6,(1) Mohali
स्थायी लेखा सं./PAN NO:		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Vineet Krishan, Advocate

राजस्व की ओर से/ Revenue by : Sh. N.D. Gupta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 11.12.2018

उदघोषणा की तारीख/Date of Pronouncement : 11.12.2018

**आदेश/Order**

**Per Annapurna Gupta, A.M.:**

The present appeal has been preferred by the assessee against the order dated 07.03.2016 of the Commissioner of Income Tax(Appeals)-2, Chandigarh [hereinafter referred to as 'CIT(A)'] agitating the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. In this case, the Assessing officer during the assessment proceedings found that the assessee had set off interest income earned from the FDRs against the project expenses. He observed that the expenditure relating to the project was required to be capitalized and that the assessee was not entitled to set off the interest income against the property expenditure. He,

therefore, disallowed the aforesaid claim of the assessee treating the interest income separately under the head 'income from other sources' and allowed the assessee to carry forward the expenditure relating to the project till the completion of the project. The Assessing officer initiated penalty proceedings u/s 271(1)(c) of the Act for claiming wrong deduction / set off of expenditure and, thereby, levied the impugned penalty.

3. The assessee unsuccessfully contested the appeal before the Ld. CIT(A).

4. Before us, Ld. Counsel for the assessee has invited our attention to the para 6.2 of the order of the CIT(A) and submitted that, in fact, the assessee had taken Over Draft limit from bank. The assessee incurred interest expenditure on the utilization of the amount out of the said over draft limit. The said amount was used for the purpose of project only. The assessee to maintain the said over draft limit had to furnish security to the bank in the shape of the FDR upon which interest income was earned. The assessee was of the bonafide belief that the interest income earned was eligible for set off against the expenditure including that one spent on the overdraft limit. It has been pleaded that the aforesaid claim of the assessee was a bonafide claim and there was no intention to evade the tax. The Ld. Counsel has submitted that even otherwise non-allowance of set off of the interest income would go to increasing the claimed expenditure which the assessee otherwise would have been entitled to claim on offering income from the project at the completion stage. He, therefore, has submitted that the assessee had no intention to furnish the inaccurate particulars of income or conceal its income.

5. Considering the above submissions of the assessee, we are of the view that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act as the assessee has proved his bonafide for the claim of the aforesaid set off of interest income. It has been held time and again that every disallowance made by the Assessing officer does not suo moto attract penalty provisions. Considering the overall facts of the case, we are of the view, that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act and the same is ordered to be deleted.

The appeal of the assessee is therefore, allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

Sd/-  
(संजय गर्ग / SANJAY GARG)  
न्यायिक सदस्य/ Judicial Member  
Dated : 11.12 .2018

Sd/-  
अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)  
लेखा सदस्य/ Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar