

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER

**I.T.A. No. 135/Asr/2017**  
Assessment Year: 2010-11

Ruchi Sharma, Prop: Jammu Pine & Synthetics Products, 3/107, Vikas Nagar, Jammu [PAN: AIWPS 0709G] <b>(Appellant)</b>	vs.	Income Tax Officer, Ward-2(2), Jammu     <b>(Respondent)</b>
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Appellant by : Sh. Pankaj Gandotra (C.A.)  
Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 21.02.2019  
Date of Pronouncement: 15.03.2019

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals), Jammu ('CIT(A)' for short) dated 28.12.2016, dismissing the assessee's appeal contesting the levy or penalty under section 271(1)(c) of the Income Tax Act, 1961 ('the Act' hereinafter) for the Assessment Year (AY) 2010-11 vide order dated 26.03.2015.

2. The assessee, a manufacturer of resin and turpentine oil from resin procured from the forest department, was during assessment proceedings found to have advanced loan/s to its' sister concern, M/s. P.R. Chemicals, on interest free basis during the relevant previous year. The advance was further found to be without any

business purpose. The assessee, on the other hand, had assumed bank borrowings, incurring interest cost at Rs.4.68 lacs for the current year, which was claimed (through the profit and loss account) per its return of income (filed on 28.11.2010). The interest corresponding to the said advance, worked at Rs.3,05,707/-, was accordingly disallowed as being not deductible u/s. 36(1)(iii) of the Act vide assessment u/s. 143(3) dated 15.12.2009. The same stood confirmed in appeal vide order u/s. 250(6) dated 12.8.2013. The assessee did not carry the matter further. Penalty proceedings for furnishing inaccurate particulars of income, initiated on the conclusion of the assessment, were accordingly proceeded with. And penalty levied at 100% of the tax sought to be evaded, i.e., Rs.54,158, relying on the decisions, inter alia, in *CIT v. Escorts Finance (P.) Ltd.* [2010] 328 ITR 44 (Del) and *CIT v. Zoom Communications (P.) Ltd.* [2010] 327 ITR 510 (Del). The same being confirmed in first appeal, the assessee, aggrieved, is in second appeal.

3. I have heard the parties, and perused the material on record.

3.1 The assessee's case for non levy of penalty is based on *CIT v. Reliance Petro Products Pvt. Ltd.* [2010] 322 ITR 158 (SC), wherein it has been clarified that mere making a wrong claim per the return of income would not by itself justify the levy of penalty u/s. 271(1)(c). This is axiomatic as, otherwise, it would imply that penalty u/s. 271(1)(c) is automatic, i.e., once an adjustment (by way of disallowance or addition) to the returned income is made in assessment. The burden, however, to furnish a reasonable basis for its' claim/s is on the assessee. The law in the matter well settled per a series of decisions by the Apex Court, for which one may refer to (viz. *Mak Data (P.) Ltd. vs. CIT* [2013] 358 ITR 593 (SC); *Union of India v. Dharmendra Textile Processors* [2008] 306 ITR 277 (SC); *K.P. Madhusudhanan vs. CIT* [2001] 251 ITR 99 (SC); *B.A. Balasubramaniam and Bros v. CIT* [1999] 236 ITR 977 (SC); *Addl. CIT vs. Jeevan Lal Shah* [1994] 205

ITR 244 (SC); *CIT vs. K. R. Sadayappan* [1990] 185 ITR 49 (SC)), to cite some, followed by Hon'ble High Courts throughout the country, as by the jurisdictional High Court in *CIT v. Lalchand Tirath Ram* [1997] 225 ITR 675 (P&H); *Prem Pal Gandhi v. CIT* (in ITA No. 353 of 2009, dated 22/7/2009).

As such, where the assessee renders an explanation which he is able to substantiate, disclosing material facts, no penalty can be imposed where the *bona fides* of the explanation are not in doubt. In its absence, or in the absence of any explanation, or if it being found false, *Explanation 1* to section 271(1)(c) shall get attracted, and the assessee deemed to have concealed particulars of income. This represents trite law, which gets represented in the statement that a plausible explanation saves penalty, which is also, in effect, the ratio of the decision in *Reliance Petro Products Pvt. Ltd.* (supra).

3.2 In the facts of the case, the assessee has advanced no explanation, i.e., for the claim of advance – shown in fact as a debtor in the balance-sheet, as a business advance or, per contra, the business purpose of the said advance, so that the same, inferably, is only by way of financial assistance to its' sister concern. There is in fact no claim, at any stage, of the business purpose of the loan/advance, much less exhibiting it, as required in terms of *Explanation 1* to section 271(1)(c). The assessee's case, as afore stated, is in fact *sans* any explanation, so that limb (A) *Explanation 1* is attracted. The reliance by the Revenue on the afore-stated decisions (refer para 2), which in fact consider the decision in *Reliance Petro Products Pvt. Ltd.* (supra), is apposite.

3.3 The Id. counsel for the assessee, Sh. Khanna, would before me, however, raise another plea. That is, that in view of the substantial own/interest-free funds, there can be no presumption as to borrowed capital, on which interest is claimed, as having been diverted to the sister concern, i.e., for non-business purpose/s. In

any case, there is nothing to suggest that the entire advance to P.R. Chemicals is financed by borrowed funds. There is merit in the argument. The burden to exhibit this, however, is squarely on the assessee. The bank borrowings, which represent the borrowed capital on which interest is paid, are, as stated, against stock. Adequate stock, which may be worked out at different points of time by applying the average gross profit rate (for the year), i.e., after excluding the stipulated margin there-from, would imply no diversion of bank borrowings, while a shortfall would imply a diversion to that extent. For example, a stock of Rs.100, given a margin of 25%, would justify a bank borrowing of Rs.75. A borrowing in excess thereof, for the period it obtains, would imply a diversion of bank borrowing, which thus gets proved. This would negate the assessee's claim of 'sufficient funds' as it has admittedly overdrawn from the bank to that extent. If, therefore, the bank borrowing is at Rs.90 (say), there is a diversion of bank borrowing (for non-business purpose) at Rs.15. In other words, the drawing power (DP), worked at different times of the year, (say, at 15<sup>th</sup> and 30<sup>th</sup> of each month), would give a fair idea of the diversion of bank borrowings during the year, if any, as well as its extent. The onus is on the assessee, who shall furnish the relevant data – including the basis thereof, to the Assessing Officer (AO), or any other that may be called for by him.

4. The matter, accordingly, in verification of the assessee's claim with regard to sufficient own (interest-free) funds with it, so that there has been in fact no diversion of bank borrowings during the relevant year, is set aside to the file of the AO, who shall cause to do so in a reasonable period, preferably three months of the receipt of this order, drawing adverse inference in case of non-cooperation by the assessee, on whom the onus to establish her claim lies, after allowing it, of course, reasonable opportunity to exhibit her claims. I decide accordingly.

5. In the result, the assessee's appeal is allowed for statistical purposes.

*Order pronounced in the open court on March 15, 2019*

Sd/-  
(Sanjay Arora)  
Accountant Member

Date: 15.03.2019

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Ruchi Sharma Prop: Jammu Pine & Synthetics Product  
3/107, Vikas Nagar, Jammu
- (2) The Respondent: Income Tax Officer, Ward-2(2), Jammu
- (3) The CIT(Appeals), Jammu
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order