

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1996/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2002-03)

M/s. West View Hotels Pvt. Ltd. 401, "Milestone", Near City Mall, Anand Vidyanagar Road, V. V. Nagar, Anand - 388120	बनाम/ Vs.	DCIT Anand Circle, Anand
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW1780E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Sunil Talati, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri S. K. Dev, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	02/05/2019
घोषणा की तारीख /Date of Pronouncement	03/05/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-4, Vadodara, ('CIT(A)' in short), dated 15.06.2017 arising in the penalty order dated 28.03.2016 passed by the Assessing Officer (AO) under s. 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 (the Act) concerning AY 2002-03.

2. The grounds of appeal raised by assessee read as under:

- “1. *The Commissioner of Income Tax (Appeals) has erred in levying penalty of Rs.12,13,525/- u/s. 271(1)(c) of the Income tax Act, It is submitted that on the facts and circumstances of the case, no penalty is leviable, as there is not any concealment of income on the part of the assessee. Therefore the penalty so levied u/s 271(1)(c) of Rs.12.13,525/- be deleted.*
2. *The Commissioner of Income Tax (Appeals) has erred in imposing penalty u/s 271(1)(C) of Rs.12.13.525/- on the addition confirmed by CIT(A) of Rs. 33,99,231/- on account of disallowance of proportionate interest expenses of Rs.33,99.231/- merely by not accepting the explanation given by the appellant during the course of Appellate proceedings. It is submitted that it is a purely a matter of difference of opinion in interpretation of facts of the case & explanations given. All the details regarding claim of above expenses has been filed along with return of income as well as during the course of appellate proceedings. Thus merely rejection of bonafide claim of expense cannot tantamount to concealing of income. It be so held now and the penalty of Rs. 12,13,525/- be cancelled.”*

3. Briefly stated, the assessee returned loss of Rs. 1,90,86,487/-. In the scrutiny assessment, an addition of Rs.33,99,231/- was made on account of disallowance of proportionate interest expenditure incurred on borrowed funds. In the course of the scrutiny assessment, the AO *inter alia* observed that assessee has given interest free advances to certain parties aggregating to Rs.3,05,64,701/-. The assessee was found to have lent the advances to the parties free of interest while it has debited interest expenses of Rs.80,38,492/- on money borrowed by him. The AO therefore disallowed proportionate interest expenses on the amount advanced free of interest and worked out disallowance of interest expenses on estimated basis. While doing so, it was alleged that assessee could not prove the commercial expediency in such advances and accordingly treated the interest expenses to the extent of Rs.33,99,231/- to be for non-

business purposes. The aforesaid estimated disallowance also invited penalty under s.271(1)(c) of the Act @ 100% thereon.

4. In the first appeal, the CIT(A) also confirmed the penalty so imposed.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. We have considered the rival submissions and perused the orders of the authorities below. The controversy involves imposition of penalty u/s.271(1)(c) of the Act on disallowance on estimated interest expenses in proportion to the corresponding interest free advances given by the assessee. We straightway note that in order to attract penalty u/s.271(1)(c) of the Act, it is necessary that there must be concealment by the assessee of the particulars of his income or furnishing of inaccurate particulars. The disallowance of certain expenditure on estimated basis actually incurred on the grounds of lack of commercial expediency is neither concealment of any particulars of income *per se* nor furnishing of inaccurate particulars as such. Needless to say, before penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that the disputed amount represents income and the assessee has concealed the particulars thereof or furnished inaccurate particulars. The AO in the instant case has disallowed a portion of interest expenditure on proportionate basis on the ground that assessee has lent money without charging interest. It is not the case of the AO that assessee has in fact not incurred any interest expenditure as

claimed. A conspectus of the Explanation – 1 to Section 271(1)(c) of the Act makes it clear that the statute visualized the assessment proceedings and penalty proceedings to be wholly distinct and independent of each other. While the AO may be justified in making estimated disallowance in quantum proceedings, such disallowance of expenses, that too on estimated basis, could not automatically fall within mischief of Section 271(1)(c) of the Act. While a claim towards expenditure may not found acceptable in quantum proceedings, such disallowance cannot invite by way of penalty. When all material facts relevant to the said claim were placed on record, the presence or absence of commercial instinct in a given case is a matter of inference. Such adverse inference against assessee would not attract imposition of penalty. The claim of expenditure towards interest made at best be taken as erroneous claim by the assessee. Such claim made in a bonafide manner cannot lead imposition of penalty. Although such claim may not be maintainable for the purposes of quantum proceedings however, in the absence of any falsity *per se* in such claim, making an incorrect claim for deduction is not *at par* with concealment or inaccurate particulars of income.

7. We also take note of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Dalmia Dyechem Industries Ltd. Income Tax Appeal No. 1396 of 2013 judgment dated 06.07.2015 to submit that the penalty cannot be imposed unless the action of the assessee *per se* is dishonest, malafide and amounting to concealment of facts. There, being no concealment of fact *per se* imposition of penalty is not justified. The penalty, in our view, is

clearly not maintainable in the absence of any contumacious or dishonest conduct. Consequently, we set aside the order of the CIT(A) and direct the AO to delete the penalty on disallowance of estimated interest expenditure.

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

This Order pronounced in Open Court on 03/05/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 03/05/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।