

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 5667/Del/2016  
Asstt. Year: 2009-10

Asstt. Commissioner of Income Tax, Circle 5(1), New Delhi.	Vs.	M/s. Boutique Hotels Pvt. Ltd. 311, Rakesh Deep Building, Plot No. 11 Third Floor, Community Commercial Complex, Gulmohar Enclave Extn. Yusuf Sarai New Delhi – 110 049 PAN AAACH2439K
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Shri Manoj Kumar Mahar, Sr. DR
Assessee by :	None
Date of Hearing	06/08/2019
Date of pronouncement	08/ 08/2019

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee against impugned order dated 24.08.2016, passed by Ld. CIT (Appeals) 35, New Delhi in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2009-10. The ground raised by the revenue is as under:

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty amounting to Rs. 32,24,281/- without appreciating the fact that Ld. CIT(A) himself confirmed the additions on account of deduction u/s 80IB(7) and netting off of interest and partly allowed on the issue of disallowance of expenses of Jaipur Project restricting the amount of addition of Rs. 57,84,341/- vide appeal no. 167/11-12 dated 28.11.2013.”*

2. None appeared on behalf of the assessee despite service of notice. Accordingly, the appeal is being decided on the basis of material on record. The brief facts qua the issue of levy of penalty u/s 271(1)(c) are that Assessee Company is engaged in the business of running and operating hotels and resort. The assessee has claimed deduction u/s 80IB (7) amounting to Rs. 1,65,55,147/-, which was 50% of the total business income from running of hotels and resort. Ld. AO noted that assessee has claimed deductions on the following income which are not related to business:-

Interest income (FDR interest)	Rs. 19,41,723/-
Rent	Rs. 7,26,000/-
Miscellaneous income	Rs. 14,56,415/-
Total	<hr/> Rs. 41,24,138/-

3. Accordingly, AO has made the disallowance of Rs. 20,62,069/-. He has also made further addition on account of disallowance of expenses of Jaipur project and disallowance on account of netting of interest income. The details of addition made by the AO are as under: -

PARTICULARS	AMOUNT
Disallowance of deduction u/s. 80IB(7)	20,62,069/-
Disallowance of expenses of Jaipur Project	54,84,341/-
Disallowance on account of netting of interest income	19,39,562/-
TOTAL	94,85,972/-

All these additions have been confirmed by the Ld. CIT (A) also. Thus, penalty has been levied on these additions.

4. Ld. CIT (A) has deleted the penalty after observing and holding as under :-

*“4.3. The appellant in the written submission submitted that mere making a disallowance cannot lead to imposition of penalty for concealment. The appellant also relied on the decision of the Apex Court in the case of Reliance Petro Products Pvt. Ltd. reported in 322 ITR 158 apart from several other case laws.*

*4.4. As regards, the disallowance of a part of the claim u/s 80IB, the addition has been made by excluding interest income, rent and misc. income for deduction u/s 80IB for the reason that the same is not derived from undertaking. The nature of disallowance is of legal nature and the AO has not made out a case of suppression of any material fact. The appellant is entitled to take a view on legal issues which are favourable to it, and the mere fact that its stand has not been accepted cannot per se lead to imposition of penalty.*

*Similarly, the disallowance in respect of expenses pertaining to Jaipur Project involves an issue of Capital expenses vs. Revenue expenses and Capitalization of expenses. Once again there has been no suppression of any material fact.*

*4.5. The addition of interest income pertains to an issue of netting of interest i.e., set off all interest payments against interest receipts. Though the appellant's explanation has also not been accepted, there was no suppression of material facts in respect of the said issue as well."*

5. After considering the relevant findings given in the impugned orders as well as the arguments placed by the Ld. DR, we find that the assessee has given following explanation before the authorities below on the issue of levy of penalty:-

*"The assessee claimed deduction u/s 80IB of the act on income derived from hotel business which includes interest income on short term surplus fund which was kept for running the hotel business, rent received from shop opened for giving facility to customer as the hotel was situated far away from populated area and misc. income derived from various hotel activities. As the above incomes have direct nexus with hotel business, these are income derived from hotel business and thus eligible for deduction u/s 80IB. Thus assessee claimed this deduction genuinely in good faith without concealing any income or furnishing inaccurate particulars of income in its return of income.*

*The appellant company has appointed a project management company M/s. Paradigm Design Consultancy Services Pvt.*

*Ltd. (hereinafter referred to as PDC) for supervision and execution of Jaipur project on 7.12.2007. Thus, during the whole previous year, PDC was supervising and executing the Jaipur Hotel Project. The appellant company has duly capitalized all the payments made to PDC. After the appointment of PDC, appellant company has withdrawn all its employees and security personnel from Jaipur hotel construction site. Thus, unlike the financial year 2007-08, no such expenses including employees' remuneration, contribution to PF, security services etc. are directly attributable to Jaipur Hotel Construction during the year under consideration. Moreover, Jaipur project is not a separate business but is a part of the appellant's business. Jaipur project is the form of expansion of the same business already carried on by the appellant because it is having common management, common control and owned by the same company. Thus all the expenses incurred by the appellant company are revenue expenses and deductible u/s 37 of the Act. The assessee has acted reasonably in good faith and has not concealed any income or furnished any inaccurate particulars of income.*

*The appellant company had taken loan from Axix Bank for construction of the Jaipur hotel. In order to mitigate cost of borrowing, it has invested the unutilized loan amount in short term FDR. It has netted interest earned on short term deposit of Rs. 19,39,562/- with interest paid on Term Loan and capitalized the net interest to Jaipur project. This is based on the established principles and various judicial*

*pronouncements. The net interest is duly capitalized to Jaipur Hotel Project. Moreover, short term investment in FDR was made out of term loan received by the appellant company, interest on term loan attributable to the amount invested in FDR is the expenditure laid out or expended wholly and exclusively for the purpose of earning interest income on FDR and thus qualify for deduction u/s 57 of the Income Tax Act. As the appellant paying interest on term loan at a higher rate than the rate on which FDR was made, taxable income of the appellant company in respect of 'interest on FDR' is nil. It has capitalized the balance amount of interest on term loan to capital work in progress. The assessee has acted reasonably in good faith relying on various judicial pronouncements and has not concealed any income or furnished any inaccurate particulars of income. “*

6. From the perusal of the aforesaid explanation, it is seen that the assessee's claim has been that interest income on short term surplus funds which was kept for running hotel business, rent receipt etc. had direct nexus with hotel business and these are income derived from hotel business. Similarly the expenses related to Jaipur project were also claimed on the ground that it is not a separate business but a part of the assessee's own business. The other project was form of expansion of same business already carried on. Thus, the same were claimed as revenue expenses. Similarly on netting of interest assessee has given a bonafide explanation as how the interest income and interest expenditure had a direct nexus. By making such a claim it cannot be held that assessee has furnished any inaccurate

particulars of income or concealed any particulars of income. Simply because disallowances have been made without any adverse material on record but on some legal interpretation, then no penalty can be levied in view of the decision of Hon'ble Apex Court in the case of Reliance Petro Products Pvt. Ltd. (supra). The findings and reasons of the Ld. CIT (A) for deleting the penalty is thus upheld.

7. In the result appeal of the revenue is dismissed.

Order Pronounced in the open court on 8<sup>th</sup> August, 2019.

sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 08/08/2019

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi