

2009-10. Both these appeals were heard together and are disposed of by this common order for the sake of convenience.

2. In both the appeals the common grievance is that the CIT(A) erred in confirming the penalty levied u/s. 271 (1) (c) of the Act. Since underlying facts in the issues are common, we deem it fit to dispose both the appeals by this common order for the sake of convenience and brevity.

3. While disposing these appeal we have considered the facts of ITA No.5434/Del/2016.

4. The roots for the levy of penalty lie in the assessment order dated 23.12.2011 framed u/s. 153 A r.w.s 143 (3) of the Act.

5. While scrutinizing the return of income the Assessing Officer found that the assessee has shown rental income of Rs.60,000/- and claimed deduction u/s.24(a)(b) @ 30% amounting to Rs.18,000/- and also claimed interest on loan amounting to Rs.2,61,152/- and under the head "income from house property" a loss of Rs.219152/- was declared. The Assessing Officer was of the opinion that the assessee has wrongly claimed deduction of Rs.261152/-and has shown bogus rental income of Rs.60,000/-.

6. Explanations were called from the assessee in respect of the rental income shown and interest on housing loan claimed. Not convinced with the reply of the assessee the Assessing Officer made addition of Rs.319152/-.

7. The quarrel travelled up to the Tribunal and the Tribunal in ITA No.307-311/Del/2013 dismissed the appeal of the assessee vide order dated 15.10.2014.

8. Penalty proceedings u/s. 271 (1) (c) of the Act were separately initiated and the assessee was asked to explain why penalty should not be levied on the disallowances confirmed by the CIT(A). The assessee explained that it has received rental income from a residential house and has claimed interest on housing loan and, therefore, it is not a fit case to levy of penalty u/s. 271 (1) (c) of the Act.

9. The reply of the assessee did not find any favour with the Assessing Officer who was convinced that the assessee has wrongly claimed deduction u/s. 24 (a) (b) of the Act and u/s. 80 C of the Act and proceeded by levying penalty of Rs.1,08,479/-.

10. Assessee carried the matter before the CIT(A) but without any success.

11. For the first time before us the counsel for the assessee questioned the validity of the penalty notice which is at page 1 of the paper book. It is the say of the counsel that the Assessing Officer has not specified under which limb of section 271 (1) (c) of the Act the penalty has been levied. For this proposition reliance was placed on various judicial decisions.

12. Arguing on the merits of the case the counsel stated that there are ample evidence to show that a residential house was purchased for which loan was sanctioned by ICICI bank and therefore, the claim of the assessee is genuine which requires no levy of penalty u/s. 271 (1) (c) of the Act.

13. The DR strongly supporting the orders of the lower authorities stated that the grounds regarding correct limb was never taken before CIT(A), therefore, this ground does not arise from the order of CIT(A). It is the say of the DR that the question whether correct limb of u/s. 271 (1) (c) is applied is a question of fact and not a question of law, therefore, the new plea taken by the counsel should not be entertained at this stage. Arguing on the merits of the case, the DR stated that the assessee has lost all the appeals and, therefore, the claim of the assessee has been established to be a wrong claim by the orders of the appellate authorities. The DR justified the levy of penalty.

14. We have given a thoughtful consideration to the orders of the authorities below and have carefully considered the rival contentions. The undisputed fact is that the rental income claim by the assessee and the interest on housing loan claimed by the assessee did not find any favour with the appellate authorities. The Tribunal while dismissing the appeal of the assessee held as under :-

“7. We have heard rival parties and have gone through the material placed on record. We find that the asscssee had purchased the property on 26 day of November 2005 for a total consideration of Rs.36 lacs for which he had made payment of Rs.36 lacs in the form of 3 cheques for Rs.5 lacs, Rs.7.50 lacs and

Rs.23,50 lacs vide cheques dated 04.10.2005, 04.10.2005 and 25.11.2005. These facts are mentioned on the copy of the sale deed itself which is placed at pages 50-52 and these findings also support findings of Ld. CIT(A). ICICI Bank disbursed tire amount of Rs.32 lacs on 31.12.2005 which is apparent from paper book page 63 where a copy of letter issued by ICICI bank is placed. Therefore, the loan taken by assessee from ICICI bank cannot be said to be taken for the purpose of purchase of the said property as the said property was already purchased on 25.11.2005 and full payment of consideration was already paid as is apparent from the copy of the sale deed. One of the factors which was taken into account by Ld, CIT(A) is that assessee had not utilized borrowed funds for acquisition of property. These facts are verifiable from the copy of sale deed itself. Therefore, in our considered opinion, Ld. CIT(A) had arrived at the correct conclusion that deduction u/s 24(h) and u/s 80-C cannot be allowed to the assessee. Section 24(a) and 24(b) deals with the deductions from house property, which reads as under:

24. Income chargeable under the head income from house property" shall be computed after making the following deductions, namely>

- (a) A sum equal to thirty per cent of the annual value:*
- (b) Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital; "*

7.1 Therefore, from the above, it is apparent that deduction can be allowed to assessee only if property was acquired out of borrowed capital which is not the case in the present appeals as clearly held by Ld. CIT(A) and by us. I therefore, Ld. CIT(A) has rightly confirmed the action of A.O. As regards deduction u/s 80C for repayment of loans, we find that section 80C also applies only if the repayment is made for loans taken for acquiring house property assets. In the present cases, it has been established that loan was not taken for the purpose of acquiring asset as asset was already acquired before disbursement of loan. Therefore, we confirm the action of Ld. CIT(A) to this effect also. In view of the above, grounds taken by the assessee against this issue in various years is decided against the assessee and the order of Ld. CIT(A) is confirmed."

15. A perusal of the order of the Tribunal (supra) clearly establishes that the assessee had claimed the rental income and the interest on housing loan on wrong facts. Therefore, to this extent we do not find any merits in the case of the assessee that

the claim was bonafide, though, not allowed by the revenue authorities and, therefore, the penalty levied u/s. 271 (1) (c) of the Act should be deleted.

16. Coming to the plea taken for the first time before us that the penalty notice did not specify under which limb of the section the penalty proceedings have been initiated. In our considered opinion this issue was never raised before the first appellate authority and has been raised for the first time before the Tribunal. We agree with the DR that the question whether correct limb has been applied is a question of fact and not a question of law. For this proposition we draw support from the decision of the Hon'ble Madras High Court in the case of Sundaram Finance 403 ITR 407 wherein the Hon'ble High Court, interalia held as under :-

“(ii) That on the facts, even assuming that there was a defect in the notices, it had caused no prejudice to the assessee, which had understood the purport and import of the notices issued under section 274 read with section 271. In the notices the relevant columns had been marked, more particularly, when the case against the assessee was that they had concealed particulars and had furnished inaccurate particulars of income. The issue was not a question of fact. The assessee had, at no earlier point of time, raised the plea before the authorities that on account of the defect in the notices it was put to prejudice.

All violations did not result in nullifying the orders passed by the statutory authorities.”

17. The Hon’ble High Court while holding the above has considered the decision of the Hon’ble Karnataka High Court in 359 ITR 565 in the case of Manjunatha Cotton & Ginning Factory and the decision of Hon’ble Supreme Court in the case of SSA’s Emerald Meadows. Considering the judicial decisions (supra) we do not find any merit in the fresh claim of the assessee. Moreover neither the assessee has moved any application for raising any additional ground nor he has been able to bring out any question of law which can be raised before the appellate authority for the first time.

18. Considering the facts of the case in quantum proceedings in the light of the judicial decision mentioned here in above, we do not find any reason to interfere with the findings of the CIT(A). Both the appeals filed by the assessee are dismissed.

19. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced in the open court on 09.08.2019.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 09.08.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.08.2019.
Date on which the typed draft is placed before the dictating Member	08.08.2019
Date on which the typed draft is placed before the Other member	08.08.2019
Date on which the approved draft comes to the Sr.PS/PS	08.08.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.08.2019
Date on which the fair order comes back to the Sr. PS/ PS	09.08.2019
Date on which the final order is uploaded on the website of ITAT	09.08.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	