

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1574/Del/2017  
(Assessment Year: 2012-13)

Chahat Exim Pvt. Ltd, A-113, Safdurjung Enclave, New Delhi PAN: AACCC5747R	Vs.	ACIT, Circle-6(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Raj Kumar, CA
Revenue by:	Shri Surendra Meena, Sr. DR
Date of Hearing	08/08/2019
Date of pronouncement	06/11/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-2, New Delhi dated 30.12.2016 for the Assessment Year 2012-13, confirming the penalty of Rs. 723293/- levied by the Id ACIT u/s 271(1)(c) of the Act for Assessment Year 2012-13.
2. Briefly stated the facts the shows that the assessee filed return of income on 20.09.2012 for an income of Rs. 6094270/-. Assessment u/s 143(3) was made on 23.02.2015, wherein, disallowance of interest expenditure of Rs. 2340758/- was made. The penalty was also initiated u/s 271(1)(c) for concealing/ furnishing inaccurate particulars of income.
3. The Id AO disallowed the interest for the reason that the assessee has taken unsecured loan of Rs. 7.20 crores from the sister concern. This loan was utilized for purchase of a property. Interest of Rs. 2340758/- was incurred and the assessee was asked to explain the business expediency of the above interest payment. AO reflected explanation of Assessee and disallowed the interest. The Id AO treated it as concealment of income and furnishing of inaccurate particulars of income at the time of initiation of penalty. The Id AO levied the penalty of Rs. 723293/- holding that the assessee has furnished inaccurate particulars of its income.

4. The order was challenged. The Id CIT(A) also confirmed the order of the Id AO vide para No. 3.2.5 of his order as under:-

*“3.2.5 It is evident that had the case of the appellant not been taken up for scrutiny, the ineligible claim of expenses would have escaped assessment. As only a few cases are taken up for scrutiny, therefore, with the hope that its return may not come under scrutiny and may simply processed u/s 143(1), the assessee can venture to give wrong information. No satisfactory explanation has been filed by the appellant on the inaccurate furnishing of particulars of income. The appellant has failed to prove that there was no fraud or neglect in filing the correct return of income. One cannot forget that the State depends upon the revenue out of the tax collected by the department. Section 271 (l)(c) has to be strictly applied in the larger interest of discipline in filing correct returns by assesseees. The view has to be kept in mind that penalty provisions are not criminal and do not require culpable mens rea. The judgements of various Hon’ble Courts relied upon by the appellant are not applicable to the facts of the appellant’s case. For instance, in the case of CIT Vs Reliance Petro Products (P) Ltd. (2010) 322 ITR / T\*? SC /relied upon by the appellant the issue under consideration was entirely different, that of claim of interest expenditure on loan taken by the assessee, which was an investment company, for purchase of shares. The assessee had in its return of income itself disallowed expenditure of Rs.28.77 lacs u/s 14A of the Act. In the case of the appellant, the interest has been claimed on unsecured loan which has been utilized for non business purposes and the same has been conceded by the appellant in as much as it has not filed any appeal against the disallowance made in the assessment order. In view of the above factual and legal position, the AO is held to be fully justified in imposing the penalty of Rs.7,23,293/-u/s 271(l)(c) of the I.T. Act. Both the grounds of appeal are dismissed.”*

5. The assessee aggrieved with that has preferred this appeal.
6. The Id AR stated that penalty cannot be levied in the present case on technical ground. He further raised the following additional grounds of appeal:-

*“1. That the following additional grounds be please admitted and adjudicated:-Additional Ground - 1*

*That under the facts and circumstances, the penalty proceedings are vitiated and unsustainable in law, more so, as the penalty notice issued is vague and non communicable as to under which limb the penalty proceedings u/s.271(l)(c) have been initiated i.e. whether for concealment of income or for furnishing inaccurate particulars of such income.*

*Additional Ground - 2*

*That under the facts and circumstances the initiation of penalty vide asstt. order is also vague since initiated as under which makes the initiation illegal and unsustainable in law:-*

*“Therefore, penalty proceedings u/s.271(l)(c) are being initiated separately for furnishing inaccurate particulars of income / concealment of income”.*

2. *That the above issues stands covered in the ground already taken, however to do away with any controversy, the specific grounds on these issues are preferred by way of additional grounds.*
3. *That the issues raised are the pure legal issues which goes to the root of the matter and all facts and material required for the these grounds are already available on record.*
4. *That such legal issues where facts exists on record and which issues goes to the root of the matter can be taken as additional grounds at any stage of proceeding and even before Hon’ble ITAT for the 1st time. The ratios of following authorities squarely applies in support of this petition:-*

*NATIONAL THERMAL POWER COMPANY LTD. 229ITR 383 (SC)*

*CIT VS. SIN IT GAD TECHNICAL EDUCATION SOCIETY 397 ITR 344 (SC) GEDORE TOOLS PVT. LTD., 238 ITR 268 (DEL.)*

5. *That no prejudice will cause to revenue by admitting these grounds, since, the revenue will be having a proper and reasonable opportunity of being heard on these issues.*
6. *That in the absence of admission of above grounds, the assessee may suffer irreparable loss.”*
7. The ld DR vehemently supported the order of the lower authorities. With respect to the additional ground he submitted that no such ground has been taken before the lower authorities.
8. We have carefully considered the rival contention. The additional ground raised by the Assessee is purely technical and legal in nature. It also goes to the root of the matter therefore, same is admitted.
9. We have heard the parties. On perusal of the order it is apparent that at the assessment stage the disallowance of Rs. 2340758/- out of interest expenditure was made. The satisfaction recorded by the ld Assessing Officer while initiating penalty proceedings u/s 271(1)(c) of the Act, he noted that he is satisfied that the Assessee has furnished inaccurate particulars of income/ concealed its income by filing inaccurate particulars of income. Further, as per the penalty order in para No. 3, he noted that since the

above addition were treated as concealed income and inaccurate particulars of income, penalty proceedings were initiated. In para No. 6 of penalty order he noted that Assessee has furnished inaccurate particular of its income to the extent of Rs. 2340758/-. In para no. 7 he also held that "I am of the opinion that the Assessee has not furnished accurate particulars of its income to the extent of Rs. 2340758/-. Hence, I have satisfied that this is a fit case for imposition of penalty for furnishing inaccurate particulars in respect of its income amounting to Rs. 2340758/- as per provision of section 271(1)(c)." Therefore, it is apparent that in the assessment order AO did not invoke anyone of the twin charges prescribed u/s 271(1)(c). However, he levied penalty for furnishing inaccurate particulars of income. Therefore, it is apparent that Assessee was not made aware of specific charge against him but he was invited with a penalty for furnishing inaccurate particulars of its income. Thus, the issue is squarely covered by the decision of the Hon'ble Karnataka High Court in 359 ITR 565 in favour of the Assessee. Accordingly, the penalty levied by the Id Assessing Officer cannot be sustained.

10. Even otherwise on the merits, it is apparent that Assessee is engaged in real estate business as mentioned in para No. 3.1 of the assessment order. The Assessee has acquired a property and same was utilized for the business of the Assessee. The borrowing was made of Rs. 4 crores was utilized for acquiring the plot. The Assessee did not deny that at that particular time it was an unauthorized area where the construction of commercial assets was not permitted. Formal sale deed was also not registered. But it cannot be denied that Assessee has furnished an explanation which was not found to be incorrect. The Id AO has disallowed the interest expenditure for the reason that impugned property for which the money was utilized is just situated adjacent to the resident of the director. Thus, the expenditure of interest was disallowed. But mere disallowance of expenditure cannot result into penalty. The explanation of the Assessee was not found false. Therefore, even on the merits the penalty u/s 271(1)(c) of the Act cannot be levied. Mere not filing of appeal against the impugned disallowance also cannot go against the assessee. There may be 101 reasons with assessee to not to

agitate the issue of disallowance in further appeal. But it cannot be held that when appeal is not filed assessee is mandatorily invited with penalty u/s 271(1)(c) of the Act.

11. Accordingly, we allow all the grounds of appeal of the Assessee, reverse the finding of the ld CIT(A) and direct the ld AO to delete the impugned penalty.
  12. In the result appeal of the Assessee is allowed.
- Order pronounced in the open court on 06/11/2019.

-Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 06/11/2019  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi