

**IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.2616/Mum/2018
(Assessment Year :2008-09)**

M/s. E.S. Patanwala 182/184, Abdul Rehman Street Mumbai – 400 003	Vs.	DCIT Circle – 13(1) Mumbai
PAN/GIR No. AAAFE1723A		
(Appellant)	..	(Respondent)

Assessee by	Shri Mukarram H Sachikot
Revenue by	Mr. Amit Pratap Singh
Date of Hearing	06/11/2019
Date of Pronouncement	27/11/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2616/Mum/2018 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-56, Mumbai in appeal No.CIT(A)-56/DCIT Circle-13(1)/2017-18/539 dated 21/02/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c)

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the levy of penalty u/s.271(1)(c) of the Act in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a registered partnership firm and had declared nil income in the return filed by it for the A.Y.2008-09 on 30/09/2008. The assessment was completed u/s.143(3) of the Act on 10/12/2010 determining nil income after adjusting a loss of Rs.1,04,83,875/- brought forward from A.Y.2001-02. We find that the Id. AO had observed that assessee had paid interest to its partners on the amounts contributed by them and interest was also paid on borrowed funds. The partners were having debit balances on account of excess withdrawals. Accordingly, the Id. AO added interest @12% on those excess withdrawals and made an addition towards notional interest in the assessment. The assessee did not file any appeal against this quantum addition. Based on this fact of assessee not preferring any appeal and quantum assessment becoming final, the Id. AO proceeded to levy penalty u/s. 271(1)(c) of the Act by levying the minimum penalty of Rs.2,41,081/- vide order u/s.271(1)(c) of the Act dated 24/06/2011. This action of the Id. AO was upheld by the Id. CIT(A). But we find from the perusal of the entire penalty order, the Id. AO nowhere had even whispered as to whether the assessee had concealed the particulars of its income or had furnished inaccurate particulars of its income. The entire order of the Id. AO is totally silent on this aspect. In any case, we find the addition has been made on a notional basis by the Id. AO by charging interest at an estimated rate of 12% on excess withdrawals made by the partners from the firm. On this count itself, the penalty u/s.271(1)(c) of the Act deserves to be deleted. Moreover, we also hold that there is absolutely no concealment of particulars of income by the assessee or furnishing of inaccurate particulars of income by the assessee. Hence, there cannot be any levy of penalty u/s.271(1)(c) of the Act, merely because an addition has been made in the assessment which remain uncontested by the assessee. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on this 27/11/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 27/11/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai