

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
Before Shri Pawan Singh (JM) & Shri S. Rifaur Rahman (A.M.)
ITA No. 6551/Mum/2018(Assessment year:2008-09)

S.K. Oswal Polymers Shop No.1, Jai Saket Co-op Housing Dadi Seth Road Malad (W), Mumbai-400 064 PAN : AAPFS1095N	vs	Dy.CIT 24(2), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Pannal Chordiya AR
Respondent by	Shri V. Vinodkumar Sr DR
Date of hearing	15-01-2020
Date of pronouncement	15-01-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal by assessee is directed against the order of learned CIT(A)-41, Mumbai dated 01-08-2018 confirming the penalty levied by the assessing officer u/s 271(1)(c) for assessment year 2008-09. The assessee has raised the following grounds of appeal:-

“1. Proper opportunity of being heard was not provided by the Commissioner of Income Tax (Appeals). The Date of hearing fixed on 10.07.2018 but due to heavy rains ,the hearing could not be attended .Letter informing that the Asst. Commissioner of Income Tax 30(3) has passed the order for giving the effect of order of ITAT filed on 24.05.2018 not considered.

2. The Learned Commissioner of Income Tax (Appeals), has erred in confirming the Levy of the penalty U/s 271(1)(c), Whereas the assessee has offered Explanation during course of proceedings before A.O & before CIT APPEALS, and hence the same is arbitrary and illegal.

3. That the Learned Commissioner of Income Tax (Appeals), was not justified in confirming the Levying the penalty U/s 271(1)(c) and the same is arbitrary and illegal, may kindly be deleted.”
2. Brief facts of the case are that assessee is a firm engaged in the business as consignor stockist and dealer in plastic powder. In the assessment completed u/s 143(3) dated 30-12-2010, the following additions were made, on which the assessing officer initiated penalty proceedings u/s 271(1)(c) of the Act:-
- | | |
|---|----------------|
| i. Interest disallowance u/s 36(1)(iii) | Rs.7,69,992/- |
| ii. FDR interest | Rs. 1,38,591/- |
| iii. Interest from State Bank of Indore | Rs. 2,42,899/- |
3. On appeal, the Ld .CIT(A) deleted addition on account of FDR interest amounting to Rs.1,38,591/-, addition on account of interest received from State Bank of Indore was confirmed; whereas addition on account of disallowance of interest u/s 36(1)(iii) of Rs.7,69,992/- was directed to be verified as to whether the source for the interest free advances were out of interest free loans and the capital of partners.
4. The assessing officer writes in the penalty order u/s 271(1)(c) dated 26-03-2014 that though the assessee was claiming that the partners capital account lying with the firm was Rs.1.01 crores, the break up details partner-wise could not be filed to substantiate the above claim and the assessee also failed to file any clarification as to whether

interest was paid to the partners on capital. According to the assessing officer, as the assessee did not file any such details, no relief could be granted on this account. Therefore, on the basis of the order of Ld. CIT(A), the assessing officer levied penalty of Rs.3,44,282/- being 100% of the tax sought to be evaded on the disallowance confirmed. Aggrieved, the assessee carried the matter before Ld. CIT(A), which did not find favour with. Further aggrieved, the assessee is in appeal before us.

5. We have heard the submissions of the learned authorised representative (AR) of the assessee and the ld. departmental representative (DR) for the revenue and perused the record. The Ld.AR has further submitted that submitted that on appeal against the quantum addition, the ITAT has given further relief and the disallowance u/s 36(1)(iii) has been brought down to Rs.2,18,030/- from the original addition of Rs. 7,69,992/- . The Ld.AR has placed before us, the copy of order giving effect to ITAT' s order passed by the assessing officer.
6. The Ld.AR of the assessee submits that the notice issued u/s 274 r.w.s. 271(1)(c) suffers from grave mistake inasmuch as that the assessee did not strike off the inapplicable portion in the notice and did not specify the charge / limb under which he was proposing to initiate penalty

proceedings. Therefore, the penalty levied u/s 271(1)(c) on the basis of a wrong notice is not sustainable and is void ab initio. The ld AR relied on the following decisions:-

➤ DCIT vs M/s Pennzoil Quaker State India Ltd

7. On the other hand the ld. DR for the revenue supported the order of the authorities below.
8. We have considered the rival submissions of the parties and perused the order of the lower authorities carefully. We have noted that the initially the assessing officer initiated penalty on the disallowances, (1) Interest disallowance u/s 36(1)(iii) of Rs. 7,69,992/-, (2) FDR interest Rs. 1,38,591/- and (3) Interest from State Bank of Indore of Rs.2,42,899/-. We have further noted that disallowance u/s 36(1)(iii) has been brought down to Rs.2,18,030/- from the original addition of Rs. 7,69,992/- and addition on account of FDR interest amounting to Rs.1,38,591/- was deleted. Thus, the two of the above two additions were either deleted or substantially deleted. Hence, no penalty under section 271(1)(c) is leviable on such additions / disallowances.
9. The third addition on which penalty was levied, relates to interest of Rs. 2,42,899/- from State Bank of Indore. During the assessment the assessee explained that the corresponding income has been offered in

the next financial year. Similar explanation was given in response to the show cause notice. The explanation of the assessee was not accepted by the assessing officer by taking view that the assessee not offered the said income on accrual basis and treated the same as concealment of income. In our view the assessee has given sufficient explanation and brought the fact on record that the said income is included in the income of subsequent assessment year. No material is brought on record by assessing officer to prove the fact that the said interest income was not offered to tax in next year. Therefore, in our view it was a sufficient explanation as per section 273B, which we accept. In our view the penalty on this addition is also not sustainable.

10. In the result appeal of the assessee is allowed. As we have allowed the appeal of the assessee on merit, thus, discussions on other submissions have become academic.

Order pronounced in the open court on 15-01-2020.

Sd/-

Sd/-

(S. Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 15th January, 2020

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)

4. CIT
5. DR
/True copy/

By order

Asstt. Registrar, ITAT, Mumbai