

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri R.C. Sharma (AM) & Shri Pawan Singh (JM)

I.T.A. No. 3158/Mum/2018 (Assessment Year 2011-12)

Shri Ajit Lalwani 413, Nav Vypar Bhawan 49, P. D'Mello Road Carnac Bunder Masjid Bunder Mumbai-400 009. PAN : AAQPL8325F (Appellant)	Vs.	ACIT-22(1) 322, Piramal Chambers Lalbaug Parel Mumbai-400 012. (Respondent)
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Assessee by	None
Department by	Shri Michael Jerald
Date of Hearing	28.01.2020
Date of Pronouncement	28.01.2020

O R D E R

Per Shri Pawan Singh (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A)-34, Mumbai dated 1.2.2018 which arises from penalty levied u/s. 271(1)(c) of the I.T. Act dated 30.9.2014 for A.Y. 2011-12.

2. The assessee has raised following grounds of appeal :-

1. On the facts and circumstances of the case, the appellate order passed by the Ld. CIT(A) is illegal being against the principles of natural justice and against the provisions of Income Tax Act, 1961.
2. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the penalty u/s. 271(1)(c) in respect of disallowance of Rs. 67,8297- u/s 36(1)(iii) and Rs. 1,00,0007- on account of addition u/s. 41(1) of the IT Act.

3. Brief facts of the case are that the assessment for A.Y. 2011-12 was completed u/s. 143(3) on 28.3.2014 determining total income at Rs. 85,86,940/-. The Assessing Officer while passing assessment order made addition on account of interest expenses disallowance u/s. 36(1)(iii) of Rs.

67,829/- and disallowance u/s. 41(1) of Rs. 1,00,000/-. The Assessing Officer while passing assessment order initiated penalty u/s. 271(1)(c) of the Act. Facts leading to the additions are that during the course of assessment proceedings Assessing Officer noted that the assessee has paid interest of Rs. 59,08,205/-, out of which interest paid to other than bank is Rs. 2,97,790/-. The assessee has also given loans and advances of Rs. 5.83 Crore to various parties. The assessee was asked to explain nature of loan and to explain whether funds given to various parties are from interest bearing funds or not and show-cause notice as to why proportionate interest u/s. 36(1)(iii) should not be disallowed as the assessee has taken loan and paid interest as reflected in profit and loss account. The assessee furnished detailed working alongwith its reply dated 11.2.2014. From reply furnished by the assessee and working of advances given to various parties as under :

Loans & Advances	Amount	Remarks
Garima Lalwani	200,000	Relative of the proprietor Mr. Ajit Lalwani
Sachin Katariya	113,300	Mr. Sachin Katariya, is Chief Accountant of the firm. This is staff advance
Ajit Lalwani HUF	765,000	Mr. Ajit Lalwani is the sole proprietor of the assessee firm and also is the karta of HUF.
Capital Enterprise	1,060,779	Pending for settlement
Dhanlakshmi Solvex Ltd.	20,200,000	Advance for purchase of property the matter is pending before Jabalpure high court.
Mahaveer Sethiya	1,600,000	The amount was paid as advance for supply but the party backed out. This was outstanding from last year in the current year One cheque was issued by the party but same was bounced & hence amount is pending to be received the assessee is contemplating to take legal action against the party.
Neminath Developers	44,76,329	This is advance against material on which we have charged interest & TDS on the same is deducted by the party material is not supplied by the party as per commitment.
Nijamuddin kika Bhai Kapadia	150,000	Advance was given for supply of material but due to non supply of material amount was returned back party out of total outstanding Rs.1650000/-

NUV industries	197,90,307	This is advance against material on which we have charged interest & TDS on the same is deducted by the party. Material is not supplied by the party as per commitment.
Rajendra Goyal	101,000.	Pending for settlement
Silver Lake Housing & property Developers Pvt. Ltd.	3,315,845	Initially this amount was given to purchase property but subsequently property was registered in a company which fully owned by the assessee.
Vijay Verma (streling strupth)	6,606,938	Advance for purchase of property.
Total	583,79,498	

4. The Assessing Officer further confronted to the assessee that certain loans were given to the parties other than business purposes. The assessee filed its reply which was not accepted by the Assessing Officer. The Assessing Officer disallowed proportionate interest disallowance of Rs. 67,829/- u/s. 36(1)(iii).

5. Second addition of cessation of liability u/s. 41(1) of the Act. During the assessment the assessee was asked to furnish all the details of the parties. The Assessing Officer recorded the assessee failed to furnish complete address of the parties. The Assessing Officer held that the amount outstanding for more than three years and added back to the income of the assessee.

6. On both the additions/disallowance the Assessing Officer initiated penalty u/s. 271(1)(c) of the Act for furnishing inaccurate particulars vide notice dated 28.3.2014. In response to the show cause notice, the assessee filed its reply dated 22.4.2014. In reply the assessee stated that mere disallowance in the assessment order does not automatically lead to the conclusion the assessee has conceal income or furnished inaccurate particulars of income. The assessee has furnished true and correct figures of income merely because certain disallowances were made in assessment, which were not contested in appeal, looking to the nature of addition and the amounts which would not automatically lead to the conclusion that the assessee has concealed its income or furnished inaccurate particulars thereof. Reply of the assessee was not accepted by the Assessing Officer. The Assessing

Officer levied 100% penalty of tax sought to be evaded on both additions/disallowances.

7. On appeal before learned CIT(A), action of the Assessing Officer was affirmed. Thus further aggrieved the assessee has filed the present appeal before the Tribunal.

8. None appeared on behalf of the assessee despite service of notice. Perusal of record reveals that authority letter on behalf of the assessee was filed before the Tribunal, which is on record. As none appeared on behalf of the assessee, therefore, we left no option except to decide the appeal after hearing learned Departmental Representative of the revenue and material available on record. Learned Departmental Representative supported the orders of the authorities below. Learned Departmental Representative further submits that the assessee has not contested the addition made in the quantum assessment, knowing it fully well that he has no merits in his favour. Learned Departmental Representative further submits while affirming penalty order learned CIT(A) has passed detailed order.

8. We have considered the submissions of learned Departmental Representative for the Revenue and carefully gone through the orders of the authorities below. There is no dispute that while passing assessment order the Assessing Officer made disallowance u/s. 36(1)(iii) of the Act of Rs. 67,829/- and disallowance u/s. 41(1) of Rs. 1 lakh. From the orders of the authorities below we have noted that the assessee has not contested both the disallowances before the higher authorities/forums. Foremost and short question for our consideration is to whether the assessee has concealed particulars of income or furnished inaccurate particulars thereof. Perusal of the penalty order reveals that during the assessment the assessee submitted that they have paid different loans to other the relatives of the assessee, chief accountant of the firm or some amount was paid during the business activities

and advances for purchase of property in Jabalpur. The Assessing Officer not accepted the explanation furnished by the assessee and allowed proportionate interest disallowance. In our considered view there is no concealment of particulars or furnishing inaccurate particulars, interest disallowance was merely a change of opinion. Further on second addition/disallowance on account of cessation of liability. The assessee disclosed detail of creditor i.e. M/s. Sanghi Organise Path. The Assessing Officer made addition by taking view that amount was pending for more than three years or that complete address of the creditor was not furnished. In our view this addition is also based on the change of opinion and not result of any inquiry or investigation conducted independently by the Assessing Officer. Hon'ble Apex Court in the case of CIT Vs. Reliance Petro Products (322 ITR 128) has held that where there is no finding in the assessment order that any details supplied by the assessee in the return was found to be incorrect or erroneous or false. In such a case there would be no question of inviting penalty u/s. 271(1)(c) of the Act. Mere making of claim, which is not sustainable in law, by itself will not amount to furnishing of inaccurate particulars regarding income. As noted above none of the particulars on those issues the Assessing Officer made disallowance were result of any concealment or furnishing inaccurate particulars rather all particulars on the basis of which the Assessing Officer made disallowances were part of record/return of income before the Assessing Officer. In our view this case is not fit for levy of penalty u/s. 271(1)(c) of the Act. Hence we direct the Assessing Officer to delete entire penalty on both the disallowances.

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

Order has been pronounced in the Court on 28 .01.2020.

Sd/-
(R.C. SHARMA)
JUDICIAL MEMBER

Sd/-
(PAWAN SINGH)
ACCOUNTANT MEMBER

Mumbai; Dated : 28 /01/2020

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai