

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.455/Mum/2019
(Assessment Years: 2013-14)**

Bipin Bhupendra Mody Office No. 15, 1 st Floor, Nvyug House 14, Dhirubhai Parikha, Marg Princess Street, Mumbai – 400 002.	बनाम/ Vs.	ACIT, Circle – 18(1) Room No. 202, Earnest House, Mumbai – 400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFPM9836P		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Rajesh S Kothari
प्रत्यर्थी की ओर से/ Respondent by :	Saurabh Deshpande

सुनवाई की तारीख / Date of Hearing	04/02/2020
घोषणा की तारीख / Date of Pronouncement	14 /02 /2020

आदेश / O R D E R

PER SHRI G. MANJUNATHA- AM:

This appeal filed by the assessee is directed against orders of the Ld. CIT(A)-53, Mumbai, dated 07.12.2018 and it pertains to A.Y 2013-14. The assessee has raised the following grounds of appeal:

1) The learned Hon'ble CIT (A) erred in not holding that the order of penalty passed under section 271(1)(c) of the Act is bad in law as the notice issued under section 274 read with section 271 of the Act is not discernible as to

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whether the penalty proceedings is initiated for furnishing inaccurate particulars of income or for concealing the particulars of income and therefore, the impugned order passed deserves to be quashed on the facts and circumstances of the case and in law.

2) On the facts and circumstances of the case and in law, the learned Hon'ble Commissioner of Income tax (A) erred in confirming the levy of penalty of Rs. 4,21,061 u/s. 271(1)(c) of the Income tax Act, 1961 (the Act) though

- a) the Appellant had furnished all the information, explanations, relevant facts and materials during the assessment proceeding and no particulars submitted by the appellant were found to be inaccurate.*
- b) The claim of allowability of interest expenses paid to **Kotak Mahindra Bank** Ltd. from interest earned from Hiranandani Construction Private Limited was a bonafide claim based on judicial decisions.*
- c) The taxability of interest income earned from Hiranandani Constructions Pvt. Ltd. without allowing deduction of interest expenses is debatable.*

3) On the facts and circumstances of the case and in law, the learned Hon'ble CIT (A) erred in confirming levy of penalty for both the defaults i.e. for concealing the particulars of income and for furnishing inaccurate particulars of income though it is not permissible in the law.

4) The learned Hon'ble CIT (A) erred in confirming levy of penalty though the learned ITO who had initiated penalty proceeding and issued the notice u/s. 274 was transferred and the new ITO has passed the penalty order without giving a fresh notice.

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5) The Appellant craves, leave to add to, amend, alter or withdraw any of the above grounds of appeal before or at the time of hearing of the appeal, if necessary.

2. Brief facts of the case are that, the assessee is an individual, engaged in the business of traders / wholesalers, filed his return of income for the A.Y 2013-14 on 28.09.2013, declaring total income of Rs. 21,86,340/-. The assessment has been completed u/s 143(3) of the Act, on 17.02.2016, determining the total income at Rs. 36,84,480/- by making various additions including additions towards income from other sources being interest received from Hiranandani Constructions Pvt Ltd., amounting to Rs. 13,62,658/-. The assessee has accepted the assessment and no appeal has been filed against assessment order. Thereafter, the A.O has initiated penalty proceedings u/s 271(1)(c) of the Act, and issued show cause notice u/s 274 of the Act, dated 17.02.2016 and called upon the assessee to explain as to why penalty shall not be levied for concealment of particulars of income in respect of interest received from Hiranandani Constructions Pvt Ltd. In response, the assessee vide letter dated 04.04.2016 submitted

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that, it has neither concealed particulars of income nor furnished inaccurate particulars of income, because interest received from the builder has not been offered to tax, as it has not claimed deduction for interest paid to banks on housing loan u/s 24(b) of the Act, and if interest paid to banks and interest received from the builder are considered, then the assessee incurs losses and such loss has not been claimed in the return of income filed for the year and consequently no loss of revenue. The A.O after considering the relevant submissions of the assessee and also taken note of the fact that, deductions towards interest paid on housing loan u/s 24(b) of the Act, and assessment of interest income received from Hiranandani Constructions Pvt Ltd., under the head income from other sources are different taxable events and hence there is no merit in the arguments of the assessee that income received from builder has not been offered to tax, because interest paid on loan is more than the amount of interest received and hence opined that the assessee has furnished inaccurate particulars of income which leads to concealment of particulars of income within the meaning of

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explanation (1) to Sec. 271(1)(c) of the Act and accordingly levied penalty of Rs. 4,24,061/- which is equal to 100% of tax sought to be evaded.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has reiterated its submissions made before the A.O and argued that interest received from Hiranandani Constructions Pvt Ltd., has not been offered to tax, because interest paid on housing loan to bank is more than the amount of interest income and the assessee has not claimed loss in the return of income filed for the year. The CIT(A) after considering the relevant submissions of the assessee and also taken note of various facts confirmed penalty levied by the A.O, on the ground that the assessee has failed to offer any explanation for not offering interest income for tax even though said income is taxable under the head from other sources, despite the fact that the assessee claims interest u/s 24(b) of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

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4. The Ld. AR for the assessee, at the time of hearing submitted that the Ld. CIT(A) was erred in confirmed penalty levied by the A.O u/s 271(1)(c) of the Act, in respect of addition made towards interest income under the head income from other sources without appreciating the fact that the assessee never claimed deduction towards interest paid to banks on housing loan and if interest paid to banks and interest received from builder is considered, the net result is a loss and said loss has not been claimed in the return of income filed for the year.

5. The Ld. DR, on the other hand, strongly supported the order of the CIT(A) and submitted that the A.O has brought out clear fact to the extent that the assessee has furnished inaccurate particulars of income which attracts penalty u/s 271(1)(c) of the Act and hence, there is no merit in the arguments of the assessee that no penalty could be levied, where net result of interest paid to banks and interest received from the builder is negative.

6. We have heard both the parties, perused the materials available on record and gone through

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orders of the authorities below. The assessee has entered into agreement with Hiranandani Constructions Pvt Ltd., for purchase of residential flat for a consideration of Rs. 2,89,85,000/- payable in installments. The assessee has taken housing loan of Rs. 2,25,00,000/- from Kotak Mahindra Bank Ltd., on 28.01.2011 and said loan has been directly paid to Hiranandani constructions Pvt Ltd. Since the installment paid for purchase of flat is in excess of amount needs to be paid, in the schedule of payments the developer has paid interest of Rs. 13,62,658/- calculated @ 12% on excess money received before the due date of payment from the assessee. The assessee has paid interest on housing loan to Kotak Mahindra Bank a sum of Rs. 14,19,435/-, and did not claim deduction towards interest paid on housing loan u/s 24(b) of the Act. The assessee has also not offered interest income interest received from Hiranandani Constructions Pvt Ltd., of Rs. 13,62,658/- under the head income from other sources. The sole reason for not claiming interest deduction and not offering interest income for tax is that if you consider interest payment to bank and interest received from the

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builder the net result under the head income from other sources is loss at Rs. 56,777/-. No doubt, the assessee needs to disclose necessary facts with regard to payment of interest for housing loan and receipt of interest income from builder under appropriate head of income. But fact remains that if you consider net result of both transactions the assessee incurred loss of Rs. 56,777/- and from this it is abundantly clear that there is no loss of revenue to the Government. When there is no loss of revenue to the Government and the claim of the assessee is bonafide, then the rigours of penalty provided u/s 271(1)(c) of the Act cannot be invoked. In this case, on perusal of facts, we find that the explanation offered by the assessee for not offering interest income to tax is bonafide and hence we are of the considered view that the A.O as well as Ld. CIT(A) were erred in levying penalty u/s 271(1)(c) of the Act. Hence, we direct the A.O to delete penalty levied u/s 271(1)(c) of the Act.

7. In the result, the appeal filed by the assessee is allowed.

This Order pronounced in Open Court on 14 /02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai, Dated 14 /02/2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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**उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai**