

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI C. N. PRASAD, JM

ITA No. 299/Mum/2019
(Assessment Year:2013-14)

Anand M. Shetty 1801, Odyssey-1, CHGS Ltd. Mumbai – 400 076	Vs.	ACIT-29(1), Mumbai
PAN/GIR No. AAOPS 6358 R		
(Appellant)	:	(Respondent)
Appellant by	:	None
Respondent by	:	Shri Michael Jerald
Date of Hearing	:	21.01.2020
Date of Pronouncement	:	02.03.2020

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-40, Mumbai ('Id.CIT(A) for short) dated 17.12.2018 and pertains to the assessment year (A.Y.) 2013-14.

2. The issue raised is that the Id. CIT(A) erred in confirming the penalty of Rs.2,00,659/- u/s. 271(1)(c) of the Income Tax Act, 1961 ('the Act' for short).

3. The issue in this case is that the penalty is levied on two counts. Firstly, there was disallowance of interest u/s. 57 of the Act. On this issue, the Assessing Officer ('A.O.' for short) noted that the assessee has claimed deduction u/s. 57 from the interest income amounting to Rs.22,67,606/-. Referring to the assessee's reply in this regard, the A.O. noted that there was justification for interest expenses amounting to Rs.18,17,425/- and no justification for the balance was given for nexus between interest expenses and

interest income. Hence, the A.O. made the impugned disallowance. On the issue of disallowance for contribution to PF and ESIC, the same was done on the ground that the payment was late as per the said Act, although the payments were made before the due date of filing of return.

4. The penalty was levied on the above disallowances which was confirmed by the Id. CIT(A).

5. Against the above order, the assessee is in appeal before us.

6. None appeared for and on behalf of the assessee. We have heard the Id. Departmental Representative (Id. DR for short) and perused the records. As regards the disallowance on account of interest, we note that it is the submission of the assessee that the entire details was given regarding the interest paid and disallowance on this account cannot lead to rigor of penalty u/s. 271(1)(c) of the Act. On this issue, the assessee has also placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Reliance Petro Products (P) Ltd.* 322 ITR 158 (SC). We note that the total interest claimed on this issue were of Rs.22,67,606/-. The authorities below have summarily held that Rs.18,17,425/- is justified and the rest is not justified. No reasoning whatsoever in detail has been brought on record. In this view of the matter, the disallowance of the claim of the assessee that also by a vague reasoning cannot lead to levy of penalty u/s. 271(1)(c) of the Act.

7. As regards the disallowance for delayed payment of PF and ESIC, we note that if the same is paid before the due date of filing the return, the same has been held as

allowable expenses in various case laws. In this view of the matter, the assessee cannot be visited with the penalty u/s. 271(1)(c) of the Act on this account. Hence, we set aside the orders of the authorities below and delete the penalty.

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

Order pronounced in the open court on 02.03.2020

Sd/-

Sd/-

(C. N. Prasad)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 02.03.2020

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai