

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 383/MUM/2019
Assessment Year: 2014-15**

M/s Swani Spices Mills Pvt. Ltd., 4, Hari Niwas, C Road, Churchgate, Mumbai-400020.	Vs.	ACIT-1(3)(1), Aayakar Bhavan, M.K. Road, Mumbai-400020.
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PAN No. AACFS3436J
Appellant

Respondent

Assessee by	:	Mr. Lajari Oswal, AR
Revenue by	:	Mr. V. Vinod Kumar, DR

Date of Hearing	:	17/02/2020
Date of pronouncement	:	26/02/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Assessee. The relevant assessment year is 2014-15. The appeal is directed against the order u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act') passed by the of the Commissioner of Income Tax (Appeals)-3, Mumbai [in short 'CIT(A)'].

2. The issue here is the penalty of Rs.6,489/- levied by the Ld. CIT(A) u/s 271(1)(c) of the Act. The background facts are that the assessee filed its return of income for the assessment year (AY) 2014-15 on 28.11.2014 declaring total income of Rs.2,67,02,110/-. During the course of appellate proceedings, the Ld. CIT(A) observed that the assessee had debited interest

and financial cost of Rs.3,37,74,880/- which included interest of Rs.2,68,845/- claimed to have been paid to BMW Financial Services Pvt. Ltd. (in short 'BMW FSPL'), an Non-Banking Financial Corporation (NBFC). In view of the failure of the assessee to deduct tax at source u/s 194A in respect of interest paid to BMW FSPL, the AO disallowed the interest of Rs.2,68,845/- u/s 40(a)(ia) of the Act.

During the course of appellate proceedings, the assessee submitted before the Ld. CIT(A) that BMW FSPL had included the corresponding interest income in computing the total income in its return of income filed. The assessee also furnished before him Form 26A dated 01.01.2017 as per which the assessee had paid interest u/s 201(1A) of the Act. The Annexure to the Form 26A is a certificate issued by a Chartered Accountant under the first proviso to sub-section(1) of section 201 of the Act, certifying that BMW FSPL had received interest of Rs.2,48,457/- from the assessee and it had taken into account the same while filing the taxable income. On the basis of the submission of the assessee, the Ld. CIT(A) deleted the addition of Rs.2,48,845/-. However, he confirmed the disallowance of the balance amount of Rs.20,000/-, observing that the assessee's claim in respect of it was false. Consequently, the Ld. CIT(A) levied a minimum penalty of Rs.6,489/- u/s 271(1)(c) of the Act.

3. Before us, the Ld. counsel for the assessee submits as regards the difference that the appellant makes lumpsum repayment of principal amount in addition to the EMI. In such instances, the amount of interest adjusted by BMW FSPL gets reduced but the appellant debits the profit and loss account as per the amortization. Therefore, the difference is only due

to their change in calculation of interest and there is only reconciliation problem.

Further, it is submitted by the Ld. counsel that although the appellant might have claimed higher amount of deduction towards interest during the assessment year under consideration, in subsequent years the interest claimed by it will be adjusted to the extent of such excess and subsequently, the appellant would have claimed lower amount of interest as deduction.

Also it is explained by him that ultimately the entire amount of loan taken from BMW FSPL will be repaid and therefore, the interest paid by the appellant will have been included in the return of income of BMW FSPL in either preceding or subsequent year and ultimately taxes will be paid on them.

It is stated by him that there is no concealment of income or furnishing of inaccurate particulars of income on the part of the appellant and it is only a bona fide and genuine mistake. In this regard, reliance is placed by him on the decision in *Price Waterhouse Coopers (P.) Ltd. v. CIT* [2012] 25 taxmann.com 400 (SC), *CIT v. Bennett Coleman & Co. Ltd.* [2013] 33 taxmann.com 227 (Bom.), *CIT v. Sania Mirza* [2013] 40 taxmann.com 17 (AP).

Finally, the Ld. counsel submits that the appellant is a genuine taxpayer and has been paying its taxes regularly on time. It is stated that for the impugned assessment year, the appellant had paid a total taxes of Rs.92,31,600/- as can be seen from the attached ITR-V and hence the appellant can never act in any malafide manner for a deduction of a small

amount of Rs.20,000/- and hence the same was unintentional and a genuine mistake.

4. On the other hand, the Ld. Departmental Representative (DR) submits that as in the instant case, the assessee has not been able to substantiate its claim to the extent of Rs.20,000/-, the Ld. CIT(A) has rightly levied a penalty of Rs.6,489/- u/s 271(1)(c) of the Act. Elaborating further that the interest paid by the appellant to BMW FSPL was Rs.2,48,457/- and not Rs.2,68,457/-, the Ld. DR submits that the penalty of Rs.6,489/- levied by the Ld. CIT(A) be confirmed.

5. We have heard the rival submissions and perused the relevant materials on record. As mentioned earlier, the dispute herein is the different of Rs.20,000/- between the interest paid by the appellant to BMW FSPL of Rs.2,48,457/- and Rs.2,68,457/- as claimed in its accounts. We are of the considered view that although the appellant might have deemed higher amount of deduction towards interest during the impugned assessment year, in the subsequent years the interest claimed by it will be adjusted to the extent of such excess and subsequently the appellant would claim lower amount of interest as deduction. Further, we find that ultimately, the entire amount of loan taken from BMW FSPL will be repaid. We find merit in the contentions of the Ld. counsel that the difference has arisen only due to the change in calculation of interest and there is only reconciliation problem.

In the impugned assessment year, the assessee has declared total income of Rs.2,67,02,110/- and has paid total tax of Rs.92,31,600/- as evident from ITR-V.

Considering the above facts and circumstances of the case, we delete the penalty of Rs.6,489/- levied by the Ld. CIT(A).

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

Order pronounced in the open Court on 26/02/2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/02/2020

Rahul Sharma, Sr. P.S.

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//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai