

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM)

I.T.A. No. 1509/Mum/2019 (Assessment Year 2013-14)

Shri Gobind Singh N. Saini 5/154, C/o. Nirmal Punjab Hotel, Wadia Estate Bail Bazar, Kurla-West Mumbai-400 070.  PAN : APOPS7108E  (Appellant)	Vs.	ITO-26(1)(5) Pratyakshakar Bhavan, C-11, 7 <sup>th</sup> Floor, Room No. 708, Bandra Kurla Complex Bandra East Mumbai.  (Respondent)
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Assessee by	None
Department by	Shri Akhtar H. Ansari
Date of Hearing	17.09.2020
Date of Pronouncement	22.09.2020

ORDER

This appeal filed by the assessee is directed against the order of learned CIT(A) dated 23.10.2018 and pertains to A.Y. 2013-14.

2. Grounds of appeal read as under :-

CONFIRMATION OF PENALTY U/S 271(l)(c) OF THE INCOME TAX ACT 1961 OF Rs. 80,000/- :-

1. The Learned CIT(A) erred in confirming penalty u/s. 271(l)(c) of the Income Tax Act 1961 of Rs. 80,000/- being 100% of tax on account of disallowances made for;

- a) Interest Expenses of Rs. 4,28,981/-
- b) Society Charges of Rs. 18,348/-

2. The Learned CIT(A) failed to appreciate that additions on account of Interest Expenses and Society Charges was agreed to by the appellant during the course of the Assessment. In case of Interest Expenses and Society Charges, it was mere disallowance of expenses claimed by the appellant.

3. The Learned CIT(A) ought not to have confirmed levy of penalty u/s. 271(l)(c) of the Income Tax Act 1961 of Rs. 80,000/-.

4. Penalty levied of Rs 80,000/- u/s 271(l)(c) of Income Tax Act, 1961 requires to be deleted.

3. Brief facts of the case

The return of income for the Assessment year 2013-14 was e-filed on 03.01.2014 declaring total income at Rs.3,71,150/-. In this case, assessment order u/s 143(3) of the Income Tax Act, 1961 was passed on 16.03.2016 assessing the total income at Rs.8,18,480/- after making an addition of Rs.4,47,329/-. During the course of assessment proceedings, it was found that the assessee had shown income from other sources to the tune of Rs.4,41,372/- as per computation enumerated below:-

Sr. No.	Particulars	Amount (in Rs.)	Amount (in Rs.)
1.	Interest Income Bank Interest		6,037
2.	Other Income Rent Income	9,41,583	
	Less: expenses incurred	5,06,248	4,35,335
	Taxable income from other sources		4,41,372

4. On perusal of the Income & Expenditure A/c. AO found that the sum of Rs.9,41,583/- declared as income from 'Other Revenue' consisted of rental income from various properties, against which the expenses, comprising of (i) interest on loan Rs. 4,28,981/- & (ii) Society charges of Rs. 18,348/-, aggregating to Rs.5,06,248/-, are deducted. Further, the AO noticed from the details submitted during the assessment proceedings that both these expenses pertain to housing loan interest & society maintenance charges of assessee's residential premises. Accordingly, the sum of Rs.4,47,329/- was added to the total income under the head 'Income from Other Sources', as the interest on loan & society charges were not paid for earning the income from other sources.

5. Against the above addition/disallowance penalty was also levied.

6. Upon assessee's appeal learned CIT(A) rejected the contention that there was no concealment in as much as all the particulars were available. Accordingly, learned CIT(A) confirmed the penalty.

7. Against this order assessee is in appeal before the ITAT.

8. I have heard learned Departmental Representative and perused the record. I find that the claim of the assessee regarding interest on loans and society charges were duly given. Hence, the assessee cannot be held guilty of concealment. As held by Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. (322 ITR 158), when a claim is made and the same does not accepted the same is not ipso facto lead to the presumption that penalty u/s. 271(1)(c) of the Act is leviable. Further in my considered opinion conduct of the assessee is not contumacious so as to warrant levy of penalty. It was also held by Hon'ble Supreme Court in the case of Hindustan Steel Vs. State of Orissa Vs. (83 ITR 26). Accordingly, I set aside the orders of the authorities below and delete the penalty in this case.

9. In the result, assessee's appeal stands allowed.

Order pronounced under Rule 34(4) of the ITAT Rules on 22.9.2020.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 22/09/2020

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.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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