

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC-I", MUMBAI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA NO. 1957/MUM/2019 : **A.Y : 2013-14**

Smt. Ragila V. Shah
301, Mangal Villa, Tejpal Road,
Vile Parle (E), Mumbai 400 057.
PAN : AFZPS1923G (Appellant)

Vs. Income Tax Officer,
Ward - 25(3)(3), Mumbai.
(Respondent)

Appellant by : **Ms. Dinkle Hariya**
Respondent by : **Shri Kailash Gaikwad**

Date of Hearing : **15/10/2020**
Date of Pronouncement : **26/11/2020**

ORDER

This is an appeal by the assessee, wherein assessee is aggrieved that the learned Commissioner of Income Tax (Appeals) - 37, Mumbai (in short 'the CIT(A)') has erred in confirming the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') amounting to Rs.1,22,677/- by order dated 11.02.2019 pertaining to Assessment Year 2013-14.

2. Brief facts of the case are that assessee has filed the return at a total income of Rs.7,02,113/- which was assessed at Rs.11,99,940/- by the Assessing Officer. The Assessing Officer made disallowance to the tune of Rs.1,50,000/- on account of housing loan claimed and Rs. 3,37,498/- on account of interest and other expenses claimed u/s 57. The penalty u/s 271(1)(c) of the Act was initiated by the Assessing Officer and was finally levied as the assessee has

accepted the addition and chose not to appeal. While levying the penalty, the Assessing Officer has stated that it is evident that the assessee has not offered the correct income for taxation. The assessee has also not filed revised return for computation on her own withdrawing the inaccurate claims made by her. The income would have escaped assessment resulting into loss of revenue, if the case had not been selected for scrutiny. Upon assessee's appeal, learned CIT(A) upheld the penalty. Against the said order, assessee is in appeal before the ITAT.

3. I have heard both the counsel and perused the record. Upon careful consideration, I find that the disallowance for housing loan interest has been done on the ground that assessee has not received the possession certificate. The disallowance on account of interest has been done on the ground that interest bearing funds have been diverted to non/low interest bearing loans.

4. In my considered opinion, the aforesaid claim of the assessee by no stretch of imagination can be held to be *ex facie* bogus. If the claim of the assessee duly disclosed is not allowed by the Assessing Officer, the same does not *ipso facto* lead to the conclusion that the assessee is guilty of furnishing inaccurate particulars of income or concealment of income which makes the assessee liable under Section 271(1)(c) of the Act. This proposition is duly supported by Hon'ble Supreme Court decision in the case of *CIT vs. Reliance Petroproducts (P.) Ltd., 322 ITR 158 (SC)*.

5. Accordingly, in the background of aforesaid discussion and precedent, I set-aside the orders of authorities below and delete the levy of penalty.

6. In the result, appeal of assessee stands allowed.

Order pronounced under Rule 34(4) of ITAT Rules on 26th November, 2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 26th November, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC-I" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai