

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.321/SRT/2019

(निर्धारणवर्ष / Assessment Years: (2014-15))

(Physical Court Hearing)

Fortune Dream Con Pvt. Ltd., Plot No. 165/C/3, Opp. Fortune Mall, GIDC, Vapi.	Vs.	The ITO, Ward-2, 3 rd Floor, Pakak Arcade, Aayakar Bhavan, Shantinagar Tithal Road, Valsad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCF 4561 F		
(Assessee)		(Respondent)

Assessee by : Shri Suresh K. Kabra, CA

Revenue by : Shri Deependra Kumar, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 29/04/2022

घोषणाकीतारीख/Date of Pronouncement: 10/05/2022

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short “the Id. CIT(A)”] in Appeal No. CIT(A)/VLS/115/17-18 dated 14.05.2019 which in turn arises out of penalty order passed by Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”] dated 30.06.2017.

2. Grounds of appeal raised by the assessee are as follows:

“1. The Ld CIT(A) had erred on the facts of the case in upholding the levy of penalty u/s 271(1)(c) of the Act.”

3. Succinct facts are that during the assessment proceedings, assessing officer noticed that in the case of M/s Damodar Suruchi Developers, interest was provided by them of Rs.15,41,117/- and on which TDS was deducted by M/s Damodar Suruchi Developers. However, on verification of books of accounts and return of income it was noticed by assessing officer that assessee company has not offered

this interest income for the year under scrutiny. Since, there was a difference in interest offered for taxation for the assessment year 2014-15 therefore assessing officer issued a show cause notice to the assessee stating that as to why the undisclosed interest income to be added back to the total income of the assessee for the year under consideration.

4. In response to such notice, assessee has filed written submission, which is reproduced below:

“.....the interest credited by party was credited by them on one sided decision and has not received such interest income. Further, we have not received any intimation regarding interest provided on the balance and not any interest amount received.”

5. The Assessing Officer mentioned in the penalty order that assessee was partner in various partnership firms. One of the firm M/s Damodar Suruchi Developers paid interest to the assessee amounting to Rs.15,41,117/- and deducted TDS on the same at Rs. 1,54,112/-. The assessee had not included this interest in its return of income for assessment year 2014-15, however, claimed TDS to the tune of Rs.1,54,112/-. During assessment proceedings, Assessing Officer added the interest income of Rs.15,41,117/- in the income of the assessee and initiated penalty u/s 271(1)(c) of the IT Act. The assessing officer also noticed that assessee did not file any appeal against the said addition made by the assessing officer, before finalizing the penalty order u/s 271(1)(c) of the Act. The Assessing Officer gave two opportunities vide letter dated 07.04.2017 & 09.06.2017, but assessee did not comply notice of Assessing Officer. Therefore, Assessing Officer imposed penalty under section 271(1) (c) of the Act, to the tune of Rs.4,76,205/-.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Learned CIT(A) who has confirmed the action of the Assessing Officer. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

7. Shri Suresh K. Kabra, Learned Counsel for the assessee pleads that assessee has received interest on account of capital contribution from the partnership firm.

However, there was unintentional mistake on the part of the assessee in the assessment year 2014-15 that assessee could not disclose the interest income in his books of accounts and return of income but claimed the TDS thereon in respect of the said interest. The Id. Counsel argues that such interest income which was unintentionally omitted to be included in the return of income for assessment year 2014-15, has been offered for tax, in the next assessment year 2015-16 and paid the taxes thereon. Thus, Counsel contends that interest income, which pertains to assessment year 2014-15, has been offered for taxation in the subsequent assessment year 2015-16, therefore, there is no loss to the Revenue and therefore penalty should not be imposed.

So far, furnishing inaccurate particulars of income is concerned, the Id. Counsel submits that it is unintentional mistake committed by the assessee, not to disclose the interest income in the assessment year 2014-15, however when the assessee came to know this fact then immediately in the succeeding assessment year, the assessee has offered the said interest income, therefore assessee has not furnished inaccurate particulars of income and for that Id. Counsel relied on the judgment of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts, 322 ITR 158 (SC).

8. On the other hand, Learned Senior Departmental Representative (Id. Sr.DR) for the Revenue submits that interest income was accrued to the assessee in the assessment year 2014-15 to the tune of Rs.15,41,117/- on which TDS was deducted by the deductor, namely, Damodar Suruchi Developers, therefore there is a clear case of furnishing inaccurate particulars of income and therefore Assessing Officer was right in levying the penalty under section 271(1)(c) of the Act. Besides, assessee did not produce books of accounts, Computation of total income, Balance Sheet and Profit and Loss account for assessment years 2014-15 and 2015-16, to prove that interest income has offered in the assessment year 2015-16. The Id Sr.DR also pointed out that from the books of account of the assessee, it is seen that assessee was using mercantile system of accounting and even TDS amount of Rs.1,54,112/- deducted on the interest income of Rs.15,41,117/- by Damodar Suruchi Developers was claimed by the assessee in its return of income for the

A.Y. 2014-15. Hence, assessee's contention regarding one sided decision of Damodar Suruchi Developers for interest income is not logical. Therefore, ld. DR prayed the Bench that the order passed by the Assessing Officer may be upheld.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Before us, the ld. Counsel contended that interest income of Rs.15,41,117/-, which was unintentionally omitted to be included in the return of income for assessment year 2014-15, has been offered for tax, in the next assessment year 2015-16 and paid the taxes thereon. To prove the fact that interest income has been taxed in assessment year 2015-16, the ld Counsel submitted copy of Income Tax Return wherein (paper book page no. 14), the assessee has shown total interest income at Rs.47,47,408/- and claimed that said total interest, includes the disputed interest income of Rs. 15,41,117/-. The assessee submitted copy of ledger account, vide paper book page 41. The assessee submitted ledger account of M/s Damodar Surchi Developers, vide paper book page no.42. The assessee submitted assessment order for assessment year 2015-16. The ld Counsel explained that total interest of Rs.47,47,408/- includes interest received on capital contribution from various partnership firm and interest Rs. 2,14,730/- belongs of other interest income (vide paper book page 14).

10. From the facts narrated above, it is vivid that assessee has offered interest income in subsequent year. We note that there is no loss of Revenue as the income tax rate for AY.2014-15 and 2015-16 were same. We note that it is unintentional mistake of the assessee and this fact has been proved that in the subsequent assessment year, assessee has shown the interest income in his return of income. Had the assessee's intention was to conceal the income or to furnish the inaccurate particulars of income, the assessee would not have disclosed the interest income in the subsequent assessment year, therefore we note that the mistake was unintentional and thus penalty should not be levied. If the, unintentional mistake has been rectified by the assessee in the subsequent AY.2015-16, then assessee

should not be penalized. Based on this factual position, as narrated above, we delete the penalty.

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

Order is pronounced on 10/05/2022 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat / दिनांक/ Date: 10/05/2022
SAMANTA/Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat