

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'C': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.5751/DEL/2019  
[Assessment Year: 2012-13]**

Jainsons Woven Art, Barsat Road, Panipat-132103	Vs	Assistant Commissioner of Income Tax, Panipat, Haryana
<b>PAN-AAHFJ4645H</b>		
Assessee		Revenue

Assessee by	None
Revenue by	Ms. Anupama Singla, Sr-DR

<b>Date of Hearing</b>	<b>25.05.2022</b>
<b>Date of Pronouncement</b>	<b>01.06.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee against the confirmation of penalty u/s 271(1)(c) by the Ld. CIT(A), Karnal, vide order dated 24.04.2019 pertaining to Assessment Year 2012-13 for an amount of Rs.1,40,900/-.

2. Facts of the case leading to the levy of penalty as arising out of the penalty order of the Assessing Officer read as under:-

1. **Disallowance of Proportionate Interest**

*During the course of assessment proceedings it was observed that assessee has shown building under construction at Rs. 14,56,465/- and flat (under construction) at Rs. 7,70,000/-. Keeping in view the proviso to u/s 36(1)(iii) the assessee was asked to explain as to why proportionate interest out of interest claimed in P&L account liable to be disallowed in respect of above said Investments.*

*The AR of the assessee submitted that no borrowed fund has been used in respect of funds invested in both these properties.*

*In view of the specific provision in the act interest attributable to funds invested in assets not put to use cannot be allowed as Revenue Expenditure.*

*The assessee reportedly has paid interest averaging @10% on borrowed funds. The assessee has not filed copy of account of these assets, however as addition was made after 30.09.2011 a sum of Rs. 1,00,000/- is disallowed out of interest claimed in P& L Account.*

**2. Disallowance of Interest in respect of advance to Ms. Neeti Jain**

*The assessee has debited huge amounts in its P& L account on account of interest payment. During the course of assessment proceedings the AR of the assessee was asked to explain as to why proportionate interest in respect of interest free advance to sister concern/relatives liable to be disallowed. The contention of the assessee was found to be justified and acceptable in respect of other advances except that to Ms, Neeti Jain. It is pertinent to mention here that Ms. Neeti Jain who is partner of the firm has been allowed interest @ 6% on capital as per partnership deed, however no interest has been charged from her in respect of funds advanced to her. Further the amount so advanced could have been debited to Capital account but assessee choose not to do so and has shown it separately as advance. The assessee cannot be allowed to have two set of rules to suit its requirement. Accordingly proportionate interest in respect of amount so advanced is liable to be disallowed. The firm has advanced a sum of Rs. 15,00,000/- on 09.09.2011 and Rs. 97,31,625/- on 03.10.2011. Interest @ 6% P.A. on daily balance on these amounts works out to Rs. 3,38,251/-, Thus a sum of Rs.3,38,251/- is disallowed out of interest claimed for not being related, to the business of the assessee.*

**3. Addition of loss on sale of Investments claimed in P & L account**

*The assessee has claimed a sum of Rs, 17,728/- on account of loss on sale of investment. The AR of the assessee was asked*

*to file its detail and to explain as to why the same be allowed as Revenue Expenditure. No reply has been filed by the assessee in respect of this, accordingly this amount is added back to the income of the assessee.”*

3. Penalty u/s 271(1)(c) was levied in the above background. The penalty levied was for concealment of income.

4. Upon assessee's appeal Ld. CIT(A) also confirmed the same.

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

6. We have heard the Ld. DR and perused the records. Upon careful consideration, we note that the first issue on which penalty has been levied is with regard to disallowance of proportionate interest. The reasoning for the same is that assessee has shown building and construction of a flat. Upon enquiry in this regard, the assessee responded that no borrowed funds has been used. The disallowance was made on the ground that funds invested in assets not put to use cannot be allowed as revenue deduction. In this regard, we note that when the assessee has clearly claimed that no borrowed funds were used in this regard, the disallowance in this regard and the penalty are subject matter of debate. Moreover, it is a rejection of claim of the assessee, which cannot be said to be ex-facie bogus.

7. Another disallowance on which penalty has been levied is with regard to disallowance of interest in respect of advanced to Ms. Neeti Jain. The reasoning for the disallowance is that the advance could have been debited to capital account of the person but assessee chose not to

do so and has shown it separately as advance. That the assessee cannot be allowed to have two set of rules to suit its requirement. We note that these are very fragile reasoning for the addition and can by no stretch of imagination be applied for levy of penalty under section 271(1)(c) of the Act.

8. As regards the levy of penalty on addition of loss on sale of investment the disallowance has been done that assessee did not reply as to why the same should be allowed as revenue expenditure. Without bringing any other detail in this regard, the authorities below have not only disallowed the claim but have levied penalty on the same.

9. In our considered opinion on the facts and circumstances of the case, the assessee cannot be visited with rigours of penalty u/s 271(1)(c). The disallowance of assessee's claim cannot ipso facto lead to the levy of penalty. This view is duly supported by the decision of honourable court in the case of Reliance Petro Product [2010] 322 ITR 158 (SC). This decision was duly cited by the assessee before the Ld. CIT(A), who did not even consider the same. Further, in coming to the above said conclusion, we are supported by the decision of the Hon'ble Court in the case of Hindustan Steel Forgings vs State of Orissa (82 ITR 26) for the proposition that assessee need not be visited with the rigours of penalty if the conduct of the assessee is not found to be contumacious. We are of the considered opinion that in the present facts, assessee's conduct cannot be said to contumacious. Accordingly in the background

of aforesaid discussion and precedents, we set aside the orders of the authorities below and delete the penalty.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 01.0.2022.

**Sd/-**  
**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 01.06.2022.

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi