

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 248/Kol/2021

Assessment Year: 2016-17

Prabhudhan Finance Pvt. Ltd.....Appellant
[PAN: AACCP 6358 B]

Vs.

Commissioner of Income-tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi.....Respondent

Appearances by:

Sh. Anil Kochar, Adv., appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT(D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : June 13th, 2022

Date of pronouncing the order : June 20th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2016-17 is directed against the order passed u/s 271(1)(c) of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Id. "CIT(A)"] dated 15.06.2021 arising out of the assessment order framed u/s 143(3) of the Act dated 25.12.2018.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. For that the order passed by the Ld. CIT (A) is bad-in-law and liable to be annulled.

2. For that the Ld. CIT (A) who initiated the penalty proceeding u/s 271(l)(c) failed to specify as to the guilt of the appellant whether it was towards concealment of income or for furnishing inaccurate particulars of income as nothing has been mentioned in the order.

3. For that the A.O. having not initiated the penalty proceeding during the course of assessment proceeding the Ld. CIT could not have initiated the same during the appellate proceeding.

4. For that there being no notice issued u/s 274 r.w.s. 271(l)(c) by the then CIT (A) who initiated the proceeding the subsequent event leading to levy of penalty are ultra vires which render the penalty order bad-in-law.

5. For that without prejudice the Ld. CIT (A) failed to properly appreciate the facts of the case and the reply submitted.

6. For that the Ld. CIT (A) failed to establish the guilt of the appellant for either for concealment of income or towards furnishing inaccurate particulars of income.

7. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.”

3. We have heard rival contentions and perused the records placed before us. We observe that the facts of the case are that the assessee is a private limited company. Assessment u/s 143(3) was completed on 25.12.2018 after making additions for notional interest at Rs. 8,96,220/-. The assessee challenged the addition of notional interest of Rs. 8,96,220/- before ld. CIT(A) and partly succeeded as the addition was sustained only to Rs. 4,71,190/-.

4. Thereafter, during the course of penalty proceedings initiated by ld. CIT(A), it was submitted by the assessee that it was not

receiving any interest on the loan amount for a long time and, was able to only recover major portion of the principal amount but no actual interest was received, therefore, penalty should not be levied. However, ld. CIT(A) did not find the submissions of the assessee as tenable and levied penalty.

5. We find that the penalty proceedings u/s 271(1)(c) of the Act were not initiated by ld. Assessing Officer (in short ld. "AO"). The assessee has claimed that no notice u/s 271(1)(c) of the Act was issued by ld. CIT(A) to initiate the penalty proceedings and *prima facie* the records indicate that ld. CIT(A) did not follow the requirement of issuing a valid notice u/s 274 of the Act r.w.s. 271(1)(c) of the Act and there are certain technical glitches in the finding of ld. CIT(A). In our considered view all these legal aspects indicate that the impugned order deserves to be quashed as bad in law.

6. Even otherwise without prejudice to the above, we also find that the impugned penalty is levied on the addition for notional interest. There is no case of furnishing of any inaccurate particulars of income or concealment of income. It is a case where it is alleged that the assessee ought to have shown income from interest on the amount advanced even when the assessee is stating that it has not received any interest. Since this is not a case of concealment of income or furnishing inaccurate particulars of income, it is not a fit case to levy of penalty u/s 271(1)(c) of the Act. We, therefore, delete the impugned penalty and allow the grounds raised by the assessee in this appeal challenging the penalty levied u/s 271(1)(c) of the Act.

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

Kolkata, the 20th June, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 20.06.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Prabhudhan Finance Pvt. Ltd**
- 2. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.**
3. CIT(A)- National Faceless Appeal Centre (NFAC), Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata