

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7397/DEL/2019
Assessment Year 2012-13

Amanshiel Realtors Pvt. Ltd., 135, F.F. Tribhuvan Complex, Mathura Road, Ishwar Nagar, Delhi.	v.	DCIT, Circle-2(2), New Delhi.
TAN/PAN: AAFCA0296G		
(Appellant)		(Respondent)

Appellant by:	Shri Sachin Agarwal, Adv.		
Respondent by:	Shri Kanav Bali, Sr.D.R		
Date of hearing:	30	06	2022
Date of pronouncement:	14	07	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-I, New Delhi ['CIT(A)' in short] dated 12.07.2019 arising from the assessment order dated 19.01.2015 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per the grounds of appeal, the assessee has challenged imposition of penalty of Rs.14,92,101/- levied under Section 271(1)(c) of the Act.

3. The assessee is engaged in the business of trading of shares/commodities and future and option. The assessee filed

return of income declaring loss of Rs.61,05,005/- for the Assessment Year 2012-13 in question. The return filed by the assessee was subjected to scrutiny assessment. The Assessing Officer assessed the total loss filed by the assessee at Rs.12,72,150/- as against the loss of Rs.91,81,235/- assessed by making certain additions and disallowances. The assessee challenged the additions and disallowances before the CIT(A) and thereafter before ITAT in the quantum proceedings. The penalty on additions/disallowances made is subject matter of controversy.

4. When the matter was called for hearing, the ld. counsel for the assessee adverted to the appellate order of the Tribunal in quantum proceedings in ITA No.2650/Del/2016 order dated 16.01.2020 and submitted that disallowances towards interest on borrowed capital and depreciation has been set aside to the file of the Assessing Officer for certain factual verifications. The ld. counsel thus submitted that the additions/disallowances have been deleted/set aside by the CIT(A)/ITAT in quantum proceedings and only two items of additions/disallowances survives as on date, i.e., disallowance of donation of Rs.5,000/- and disallowance of interest on delayed payment of income tax at Rs.2,16,000/-. It was contended on behalf of the assessee that in the light of the judgment of the Hon'ble Supreme Court in the case of *Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)*, the imposition of penalty on mere making of claim is not sustainable in law and does not tantamount to furnishing of inaccurate particulars of income. The ld. counsel accordingly pleaded for exonerating the assessee from the charge of penalty under Section 271(1)(c) of the Act.

5. The ld. DR for the Revenue, on the other hand, contended that the assessee has deliberately and falsely claimed interest on income tax as revenue expenses which is grossly inaccurate and a false claim. The ld. DR accordingly relied upon the judgment rendered by the Hon'ble Delhi High Court in the case of *CIT vs. Zoom Communications Pvt. Ltd.*, 233 CTR 465 (2010) for imposition of penalty on the disallowance on interest on Income Tax. As regards the other items of disallowances/additions, the ld. DR relied upon the orders of the lower authorities.

6. We have carefully considered the rivals submissions. The disallowance of donation appears to have been carried out merely on account of no objection from the assessee. While the disallowance of donation may thus be justified in quantum proceedings, imposition of penalty thereon in respect of such unproved claim of small amount is not justified. The penalty imposed on such addition is thus reversed.

7. As regards, the disallowance of interest on late deposit of Income Tax under Section 37(1) amounting to Rs.2,16,000/-, we note that the claim of the assessee is not only *prima facie* incorrect in law and wholly without any basis, the explanation furnished by the assessee for making such claim is devoid of any *bona fide* basis. As stated on behalf of the Revenue, the assessee has, in fact, contested the disallowance before the appellate authorities in the quantum proceedings. The assessee has failed to offer any explanation for such claim and has merely relied upon the judgment of the Hon'ble Supreme Court in the case of *Reliance Petro Product (supra)* which is admittedly not applicable in the present case. It is not a mere wrong claim of expenses but

the action of the assessee is apparently beset with trapping of falsehood. In the light of the judgment of Hon'ble Delhi High Court in the case of *Zoom Communications (supra)*, we see no merit in the plea of the assessee as regards the penalty on disallowance on account of interest on income tax. To the extent of penalty component on such amount, we decline to interfere. However, the other item of disallowances/additions do not qua for imposition of penalty under Section 271(1)(c) where the additions made have been set aside or deleted owing to the fact that such additions/disallowances, at best, can be regarded as wrong claims of debatable nature. Consequently, the penalty on other items of disallowances/additions stands deleted.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 14/07/2022.

Sd/-

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: /07/2022

Prabhat