

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.As. No.5711, 5712 & 5713/DEL/2018
Assessment Years 2009-10, 2010-11 & 2011-12

Anand Prakash, 71, Navyug Market, Ghaziabad.	Vs.	ITO, Ward-1(5), Ghaziabad.
TAN/PAN: ADDPP5884B		
(Appellant)		(Respondent)

Appellant by:	Shri Akhilesh Kumar, Adv.		
Respondent by:	Shri Kanv Bali, Sr.DR		
Date of hearing:	24	01	2023
Date of pronouncement:	03	02	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the assessee against the orders of the Id. CIT(A)-I, Noida, all dated 30.04.2018 arising from the penalty orders passed by the Assessing Officer u/s.271(1)(c) of the Act, all dated 28.02.2017 concerning Assessment Years 2009-10, 2010-11 and 2011-12.

2. All the captioned appeals have been heard together and are being disposed of by way of this consolidated order.

ITA No.5711/Del/2018 (Assessment Year 2009-10)

3. Briefly stated, the assessee filed return of income declaring Rs.18,67,980/- as taxable income. The assessment was framed under Section 143(3) r.w. Section 263 of the Act wherein the additions of Rs.17,65,013/- was carried out. The addition of

Rs.12,10,106/- on account of disallowance of interest was however deleted in quantum proceedings and the balance addition of Rs.5,54,907/- was restored to the file of the Assessing Officer for suitable verifications in the quantum proceedings in ITA No.5620/Del/ and 6184/Del/2015 (Assessment Years 2009-10 and 2010-11) order dated 19.04.2018.

4. In this backdrop, the ld. counsel submitted that the dispute now remains towards imposition of penalty at an amount of Rs.5,54,907/-. It was submitted that the aforesaid amount represents payment of interest to India Bulls/Kotak Mahindra on which TDS was omitted to be deducted by the assessee required in terms of provision of Section 194A of the Act and consequently disallowance were carried out under Section 40(a)(ia) of the Act. In the matter, the ld. counsel pointed out that the payees are reputed companies and the corresponding income have been included in the respective returns of the payees. Thus, no additions/disallowances under Section 40(a)(ia) are permitted in view of plethora of judicial precedents. Notwithstanding, the imposition of penalty under Section 271(1)(c) for disallowances under deeming provisions of Section 40(a)(ia) where the interest has been paid as a matter of fact, is not justified.

5. We find merit in such contentions. The Tribunal has set aside the issue of disallowance under Section 40(a)(ia) to the file of the Assessing Officer for verification of such interest by the payees as their income and reversal of disallowance. The payment of interest to the payees is not in dispute. Thus, admittedly the interest expenses have been actually incurred. The disallowance of interest expenditure was attracted only due to non deduction of TDS and it cannot be said to be a case of concealment of income

or furnishing of inaccurate particulars of income *per se*. The levy of penalty under Section 271(1)(c) is thus not attracted. Coupled with this, notice issued under Section 274 r.w. Section 271(1)(c) has been stated to be issued in a mechanical manner without striking of the inappropriate portion from the notice. It is thus not known the exact nature of default committed by the assessee.

6. Hence when seen cumulative, assessee deserves to be exonerated from the clutches of penalty under Section 271(1)(c) of the Act.

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

ITA No.5712/Del/2018 (Assessment Year 2010-11)

8. Briefly stated, the assessee declared taxable income of Rs.20,56,101/- in its return of income for Assessment Year 2010-11. Additions of Rs.1,47,99,879/- was made to the returned income in the assessment framed under Section 143(3) of the Act. Finally, an amount of Rs.11,02,740/- was sustained in the hands of the assessee in the quantum proceedings before the Tribunal in ITA No.6184/Del/2015 order dated 19.04.2018.

9. In this context, the ld. counsel pointed out that the assessee had received Rs.10 lakh in aggregate from ten different trusts which were alleged to be non genuine and consequently the additions were made under Section 68 of the Act and interest of Rs.1,02,740/- thereon was also added. In this backdrop, the ld. counsel adverted to the ledger account of the lenders trusts and submitted that similar credits have been received from these trusts in the earlier years also which has not been disturbed and accepted as genuine in the earlier years. The assessment orders of the trust were also adverted to reinforce the claim of the assessee that the

lender trusts are *bona fide* and genuine. It was further contended that the additions have been made by invoking the doctrine of preponderance of probabilities and without any concrete basis against the assessee. It was thus urged that penalty under Section 271(1)(c) is not justified under the circumstances which operate on a different footing.

10. We have considered the submissions made on behalf of the assessee. In the light of the facts pointed out on behalf of the assessee, i.e., (i) similar transactions accepted in the earlier years (ii) payment of interest on such entries after deduction of TDS (iii) assessment of trust (iv) additions based on preponderance of probabilities, we find merit in the plea of the assessee when tested on the touchstone of Section 271(1)(c) of the Act.

11. While it is true that the findings given in the assessment proceedings would be relevant and admissible material in the penalty proceedings but however such findings cannot operate as *res judicata* because considerations that arise in the penalty proceedings are quite different from those in the assessment proceedings. The documents produced on behalf of the assessee points out the circumstances which do create some doubt, the benefit of which should go to the assessee insofar as the penalty proceedings are concerned.

12. We are thus inclined to accept the contentions raised on behalf of the assessee. The penalty imposed on the assessee under Section 271(1)(c) is thus not sustainable in law and is thus directed to be deleted.

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

ITA No. 5713/Del/2018 (Assessment Year 2011-12)

14. Briefly stated, the assessee declared Rs. 20,69,370/- in its return of income for Assessment Year 2011-12 in question and addition of Rs.20,78,500/- was made in the quantum proceedings. However, an amount of Rs.1,30,000/- approx. was only sustained in the second appeal before the Tribunal. The ld. counsel submits that aforesaid amount of Rs.1,30,000/- represents interest on loan of Rs.10 lakh disallowed in Assessment Year 2010-11 as discussed in ITA No.5712/Del/2018 supra.

15. For the reasons narrated in Assessment Year 2010-11 (supra), we see no justification in retaining the penalty imposed on such interest disallowance. The penalty imposed under Section 271(1)(c) is thus deleted.

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

17. In the combined result, all the captioned appeals of the assessee are allowed.

Order pronounced in the open Court on 03/02/2023.

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

DATED: /02/2023

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**