

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA , JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 282/MUM/2024
(Assessment Year : 2014-15)**

Kishore Bansilal Baldia Shop no. 13, Trimurti Market, 126/128 Sheikh Memon Street, 400002.	Vs.	Income Tax Officer, 23(2)(6) Room no. 614, 6 th Floor, Piramal Chamber, Lalbaug, Parel 400012.
PAN/GIR No. AABPB4779J		
(Appellant)	..	(Respondent)

Assessee by	Shri. Manish Ghanchi
Revenue by	Shri. P.D. Chougule
Date of Hearing	22/05/2024
Date of Pronouncement	27/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 23/11/2023 passed by NFAC, Delhi in relation to the penalty proceedings u/s.271(1)(c) for the A.Y.2014-15.

2. The assessee is aggrieved by levy of penalty u/s.271(1)(c) of Rs.4,25,000/-.

3. The brief facts are that the ld. AO noted that assessee has overdrawn / debit balance of Rs.1,99,95,987/- outstanding as on 01/04/2013 in his capital account with the partnership firm, M/s. Vikram Jewellers and has debited interest expenditure of Rs.18,54,178/- calculated @ 9% per annum on Rs.2,06,00,000/- which was overdrawn from his capital account from the partnership firm. AO further observed that assessee's accounts have undergone audit u/s. 44AB of the Income Tax Act, 1961 which makes him liable to deduct tax at source on any payment/credits towards interest expenses. But, it was found that the assessee has failed to deduct tax at source while making the payment/credit of above interest of Rs. 18,54,178/- on unsecured loan taken/overdrawn in his capital account from M/s. Vikram Jewellers. In view of the above, interest amounting to Rs. 18,54,178/- claimed by the assessee is hereby disallowed being expenditure incurred for non-business purpose and the same is added to the total income of the assessee. Assessee did not prefer any appeal against the disallowance .

4. Thereafter, the ld. AO initiated penalty proceedings u/s.271(1)(c) not only for concealing the particulars of income but also for inaccurate particulars of income on disallowance of interest claimed. The ld. AO has levied penalty of Rs.4,25,000/- on such disallowance vide his penalty order dated 26/05/2017. During the course of penalty proceedings before the ld. CIT(A), the assessee submitted that it has paid interest to the firm to the tune of Rs.18,54,178/- and assessee had not deducted TDS thereon under the impression

that interest is not covered u/s.194A as the intrests is paid by a partner to the partnership firm. The ld. CIT(A) has confirmed the penalty merely on the ground that assessee had not preferred the appeal against the quantum order u/s.143(3) dated 28/11/2016 and no compliance has been made by the assessee and has not furnished any reasons for not filing the appeal. Instead of deciding the appeal on merits, he has dismissed the appeal that assessee did not file any appeal against the assessment order.

5. It is a very settled law that penalty proceedings are different and distinct from the quantum proceedings and even if disallowance / addition has been made in the assessment order and assessee may not have challenged the said addition, that does not automatically lead to conclusion that assessee is also liable for penalty u/s.271(1)(c). Penalty can only be levied if there is a charge for concealment of income or furnishing of inaccurate particulars of income on facts.

6. Here in this case the disallowance of interest of Rs.18,54,178/- has been made on the ground that assessee had failed to deduct tax at source while making the payment of interest of unsecured loan taken / overdrawn from his capital account from the partnership firm. If assessee as a partner has paid interest to the partnership firm on overdrawn capital from his own capital account, then failure to deduct tax u/s.194A, does not tantamount to furnishing of inaccurate particulars or concealment of income. If the TDS is

not being deducted, then ld. AO should have held assessee to be assessee-in-default and initiated proceedings u/s.201. Thus, levying penalty u/s. 271(1)(c) for non-deduction of TDS on the interest payment on these facts cannot be levied and accordingly, the penalty of Rs.4,25,000/- is deleted.

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

Order pronounced on 27th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 27/05/2024
Karuna, Sr. Ps.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai