

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "E" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 4521/Mum/2024
Assessment Year : 2012-13

Haripriya Syntex Private Limited, Jaihind Building No. 1A, 1 st Floor, Room No. 2, Bhuleshwar, Mumbai PAN : AABCH1530N	vs.	DCIT, Circle-4(2)(2), 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai
(Appellant)		(Respondent)

Assessee by : Shri V.H. Jariwala
Revenue by : Shri G. Santosh Kumar, Sr. DR

Date of Hearing : 17/10/2024
Date of Pronouncement : 21/10/2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt.10-07-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)'] and it relates to AY. 2012-13. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the penalty Rs.3,44,140/- levied by the Assessing Officer (AO) u/s. 271(1)(c) of the Income Tax Act, 1961 (‘the Act’).

2. The Ld.AR submitted that the assessment order was completed by the AO u/s. 143(3) of the Act making three types of additions. In the appellate proceedings, the Ld.CIT(A) deleted two types of additions and

granted partial relief in respect of one addition, viz., the disallowance of interest expenditure u/s. 36(1)(iii) of the Act. The Ld.AR submitted that the AO treated a part of interest expenditure as 'capital expenditure' and accordingly, made adhoc disallowance of Rs.12,47,849/- out of interest expenditure claimed by the assessee. The Ld.CIT(A) reduced the disallowance to Rs.10,60,672/- and accordingly the AO levied penalty of Rs. 3,44,135/- on the above said amount sustained by Ld CIT(A) treating it as a case of furnishing of inaccurate particulars of income.

3. The Ld.AR submitted that the assessee has claimed interest expenditure treating it as revenue, but the AO has treated the same as capital in nature. Even the disallowance has been made on estimated basis. By placing reliance on the decision rendered by the Hon'ble Supreme Court in the case of CIT Vs Reliance Petroproducts Limited [322 ITR 158](SC), the Ld.AR submitted that non-acceptance of claim made by the assessee will not result in furnishing inaccurate particulars of income.

4. The Ld.DR, on the contrary, supported the order passed by the Ld.CIT(A).

5. Having regard to the rival contentions, we are of the view that there is merit in the submissions made by the Ld.AR. The AO has made disallowance out of interest expenditure by capitalising a part of interest expenditure. Thus, the assessee has made claim which is not acceptable to the AO and accordingly impugned disallowance came to be made. The Hon'ble Supreme Court in the case of Reliance Petroproducts Limited (supra) has held that a mere making of a claim, which is not sustainable under law would not amount to furnishing of inaccurate particulars of income. Accordingly we are of the view that the

Ld.CIT(A) was not justified in confirming the penalty levied by the AO u/s. 271(1)(c) of the Act. Accordingly, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete the penalty levied u/s. 271(1)(c) of the Act for the year under consideration.

6. The assessee has raised certain legal issues. Since we have deleted penalty on merits, those legal issues are rendered academic in nature and hence we decline to address the same.

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

Order pronounced in the open court on 21-10-2024

Sd/-
[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 21-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "E" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai