

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 313/Del/2016
(Assessment Year: 2007-08)

Ram Lal Kapoor & Sons, 2596, Nair Sarak, New Delhi PAN:AAAFR0160Q (Appellant)	Vs.	ACIT, Circle-46(1), New Delhi (Respondent)
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Assessee by :	Sh. Y. K. Sharma, CA
Revenue by:	Sh. K. K. Jaiswal, DR
Date of Hearing	17/03/2016
Date of pronouncement	13/05/2016

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is appeal filed by the assessee against the order of the Id CIT(A)-35, New Delhi dated 17.11.2015 for the Assessment Year 2007-08 wherein, penalty u/s 271(1)(c) of Rs.18244/- is confirmed.
2. The assessee has raised the following grounds of appeal:-
 - (1) *That on the facts and in the circumstances of the case and under the provisions of law the Commissioner has erred in dismissing the ground of the Appellant that the proceedings have become barred by law as the notice/order had been served only on 01/04/2013 (Order passed on 22/03/2013) and CIT (A) order was passed on 06/07/2011.*
 - (2) *That without prejudice to above and that on the facts and circumstances of the case, the Learned. Commissioner has erred in upholding the order of penalty u/s. 271(1) (C) of I.T. Act of Rs.18,244/-.*
3. The brief facts of the case is that assessee is a partnership firm who was assessed u/s 143(3) vide order dated 23.11.2009. In the assessment order remuneration of Rs.59620/- was disallowed u/s 40(b) of the Income Tax Act, 1961. The disallowances arisen because of the reason that the assessee has received interest amounting to Rs.149054/- on income tax refund. This sum was not reduced by assessee from the book profit to calculate remuneration payable to partner. Against this assessee preferred an appeal before the Id CIT (A) who vide order dated 06.07.2011 dismissed the appeal

of the assessee. On this disallowance penalty u/s 271(1)(c) was initiated. Vide order dated 22.03.2013 penalty u/s 271(1)(c) was levied on the assessee of Rs.18244/- in the penalty proceedings the assessee's reply was rejected.

4. In the first ground of appeal the assessee has contended that the penalty order has been barred by limitation of time as the order of penalty was served on 01.04.2013 which was passed on 22nd March 2013, and order of Id CIT(A) in quantum proceedings was passed on 06.07.2011.
5. Ld AR submitted that according to the provision of section 275 the penalty order should have been passed within one year from the end of financial year in which the order of Id CIT (A) was received. In the present case, the Id CIT(A)'s order is passed on 06.07.2011, therefore, the penalty order should have been passed on or before 31st March 2012. In the present case, the penalty order has been passed on 22.03.2013. On the merits, also he submitted that the assessee has not furnished any inaccurate particulars of income. For this, he relied on the decision of Hon'ble Delhi High Court in case of CIT Vs. Mohair Investments and Trading Co. Pvt. Ltd. dated 30.09.2011 in ITA No.511/2011. He also relied on the order of Hon'ble Gujarat High Court in case of CIT Vs. JJ Industries 35 Taxmann.com 103 (Guj).
6. Ld DR relied on the orders of lower authorities.
7. We have carefully considered the rival contention. In this case, order of Id CIT (A) dated 06.07.2011 was received by the Commissioner of Income Tax on 05.08.2011 and penalty order was passed on 22.03.2013. The penalty order dated 30.03.2013 was sent to assessee by speed post on that date. On the facts of the above case, it is required to be seen whether the penalty order passed by the Assessing Officer is within time or not. The provisions of section 275(1)(a) are perused.
8. According to that where the assessment is subject-matter of appeal then the penalty order is required to be passed by the Assessing Officer later of following two time limits:
 - a. before the expiry of financial year in which the proceedings in the course of which action for imposition of penalty has been initiated. In this case the penalty proceedings are initiated vide order dated

23.11.2009 therefore, the penalty order should have been passed on or before 31st March 2010.

- b. within one year from the end of the financial year in which the order of Id CIT(A) is received. The order of the Id CIT(A) in this case was received on 05.08.2011. Therefore, the penalty order should have been passed on or before 31.03.2013.
9. Therefore, in this case the penalty order should have been passed on or before 31.03.2013 whereas same has been passed on 22.03.2013. Therefore, the penalty order cannot be said to be barred by limitation. In view of this ground No.1 of the appeal is dismissed.
 10. Ground No.2 of the appeal is against the levy of penalty on merits. In the present case the penalty has been levied on reduction of allowable remuneration u/s 40(b) of the Income Tax Act. The only reason for which the remuneration has decreased from what is claimed by the assessee is that income tax interest earned by the assessee of Rs. 149054/- has been taken in the book profit by the assessee whereas Id Assessing Officer has taken the same as income from other sources. In the present case the fact of receipt of interest on income tax refund was available with the revenue further, same was also showed in the profit and loss account by the assessee. On the identical facts and circumstances Hon'ble Gujarat High Court in case of CIT Vs. JJ Industries (supra) has deleted the disallowance where interest income were shown in the profit and loss account for the purpose of computation of book profit for working allowable remuneration. The Hon'ble High Court has upheld the view of the tribunal therefore for the purpose of ascertaining the allowable remuneration the profit shall be in the profit and loss account and is not to be classified in the different heads of the income u/s 14 of the Act. Hon'ble High court has further held that the interest income therefore cannot be excluded for the purpose of determining allowable deduction u/s 40(b) of the Act. Therefore in the present case it cannot be said that claim made by the assessee was anyway false or totally unsustainable. In view of this we do not find that such disallowance of expenditure should result into penalty u/s 271(1)(c) of the Act where, the assessee has disclosed complete facts and only because of the items to be reduced from the book profit resulted into disallowance of remuneration to the partner. We are of the view that for this assessee has not furnished any

inaccurate particulars of income. In the result we reverse the finding of the Id CIT(A) and delete the penalty levied u/s 271(1)(c) of Rs. 18244/-. In the result ground No.2 of the appeal is allowed.

11. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13/05/2016.

-Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:13/05/2016

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi