

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "B": NEW DELHI

BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER &
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA No. 93/Del/2012

A.Y. : 2001-02

Income Tax Officer,
Ward 11(1),
Room No. 321, C.R. Building,
IP Estate, New Delhi – 110 002

vs. M/s Energetic Constructions Pvt. Ltd.
203, Okhla Industrial Area, Phase-III,
New Delhi – 110 020
(PAN : AAACE 2614 H)

(Appellant)

(Respondent)

Assessee by : Sh. R.K. Raman, CA
Department by : Sh. Vikas Suryavanshi, Sr. D.R.

ORDER

PER U.B.S. BEDI : JM

This appeal by the Revenue is directed against the order passed by the Ld. CIT(A)-XIII, New Delhi dated 5.10.2011, relevant to assessment year 2001-02, whereby deletion of penalty of ₹ 5,20,969/- imposed by the AO u/s. 271(1)(c) of the IT Act, 1961 has been challenged.

2. The facts indicate that the assessee has disclosed income of ₹ 7,18,825/- in the return filed for the A.Y. 2001-02. However, an addition of ₹ 13,17,241/- was made by treating the interest income on

short term deposits as 'income from other sources'. Apparently, the assessee had disclosed the income as 'income from business'.

3. In appellate proceedings, Ld. CIT(A) allowed the assessee's claim that the interest income of ₹ 13,17,241/- was not to be taxed as income from other sources. However, ITAT vide its order in ITA No. 1378/Del/2005 dated 25.3.2008 reversed the order of the Ld. CIT(A) and upheld the AO's view that interest of ₹ 13,17,241/- earned from fixed deposits is liable to be assessed as income from other sources. Subsequent to the receipt of the ITAT order, the AO has imposed the penalty u/s. 271(1)(c) holding that the assessee had concealed its income to the extent of ₹ 13,17,241/- by setting off the interest income against expenses in the work in progress account debited to the profit and loss account. He accordingly, imposed a penalty @ 100% of the tax sought to be evaded at ₹ 5,20,969/-.

4. Assessee took up the matter in appeal and challenged the action of the AO against imposing impugned penalty u/s. 271(1)(c) and raised various pleas in the appeal and Ld. CIT(A), while considering the pleas of the assessee from para 8 to 10.4, has concluded to delete the impugned penalty as per para 11 of his order. The relevant portion of the order from para 8 to 11 are reproduced as under:-

“8. Considering the material on record it emerges that since the year 1999 the appellant has been showing interest earned on short term deposits made for raising margin money as business receipts. Thus it is a matter of record that in preceding years, the department has accepted the appellant's claim of treating the interest received on fixed deposits made for obtaining margin money as part of the business receipts which have been allowed to be set off against the business expenses. In the Assessment year under consideration, the CIT(A) has allowed relief to the appellant. However, the ITAT has reversed the order of the AO following the decision of the jurisdictional High Court in the case of CIT Vs. Sriram Honda Power Equipment 289 ITR 475(Del). It is thus, apparent that the issue in dispute which has been held to be in the nature of concealment of income by the AO is a debatable issue as the Hon'ble courts have ruled both in favour and against on the issue. At the time of filing of the return on 31.10.01, the decision of the jurisdictional High court in the case of CIT Vs. Sriram

Honda Power Equipment 289 ITR 475(Del) had not been delivered. Hence, at the time of filing of the return for A.Y. 2001-02 the appellant's claim was duly supported by the past history on this issue.

9. *Moreover as stated by the appellant in the statement of facts the entire particulars of the interest income stood disclosed in the return filed. Thus the variance in the returned and assessed income is on account of the legal interpretation laid down subsequently on a debatable issue. In such circumstances it has been held by the various judicial authorities that penalty u/s 271(1)(c) is not attracted.*

10. *It has been held in CIT vs. Eastern Medikit Ltd. Delhi High Court that no penalty is impossible when two views are possible. Hon'ble Calcutta High Court in the case of Burmah Shell Oil Storage and Distributing Co. of India Ltd. vs. Income Tax Officer reported in 112 ITR 592 (Cal.) held as under:*

"Rejection of any legal contentions raised by any party and refusal to entertain any claim for deduction made

on cogent legal grounds can never constitute concealment or furnishing of inaccurate particulars and no Income tax Officer can therefore, be satisfied that an assessee has concealment his income or has furnished inaccurate particulars, only because the income-tax officer has chosen to reject the calculation on behalf of the assessee in support of the assessee's claim for deduction and has disallowed such claims for deduction put forward on legal grounds."

10.2 Further in the case of CIT VS. Harshwardhan Chemicals and Mineral Ltd. 259 ITR 112 (Raj.) the Hon'ble Appellate Tribunal deleted penalty by holding:

"Where an arguable, controversial or debatable deduction is claimed, the claim could not be said to be false, otherwise, it would become impossible for any assessee to raise any claims or deduction which might be debatable and it was not the intention of the Legislature to make punishable such claims, if they were not accepted."

10.3 On further appeal by revenue the Hon'ble Rajasthan High Court held as under:

"Held affirming the decision of the Appellate Tribunal, that no penalty was leviable in view of the finding of the Tribunal that when the assessee had claimed deduction of an amount that was debatable it could not be said that the assessee had concealed any income or furnished inaccurate particulars for evasion of tax, and in view of the finding of the Tribunal no case was made out for interference."

10.4 The Hon'ble Supreme Court in case of CIT VS. Reliance Petroproducts P. Ltd. 322 ITR 158 has held that penalty u/s 271(1)(c) will not lie merely if an incorrect/inadmissible claim has been made in the return and when all material facts having been disclosed in the return of income. The Hon'ble Court has observed as under:

"A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly,

the assessee must have furnished inaccurate particulars of his income. The present is not a case of concealment of the income. That is not the case of the Revenue either. However, the Ld. Counsel for Revenue suggested that by making incorrect claim of the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particulars" is a detail or details (in plural sense); the details of a claim, or the separate items of an accounts. Therefore, the word "particulars" used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Ld. Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars

of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars."

11. In the case under consideration it stands established that the issue resulting in the determination of higher income u/s 143(3) was clearly debatable. Respectfully following the ratio of the above judgments which have held that penalty is not imposable on debatable issues or claims/deductions disallowed on account of varying legal interpretations it is held that penalty u/s 271(1)(c) is not imposable in the present case. Accordingly the penalty order u/s 271(1)(c) dated 29.01.2009 imposing the penalty of Rs. 520969/- is quashed."

5. Aggrieved by the order of the Ld. CIT(A), revenue has filed this appeal and Ld. D.R. while relying upon the basis and reasoning as

given by the AO, has pleaded for setting aside the order of the Ld. CIT(A) and restoring that of AO, because the penalty is attracted in this case and Ld. CIT(A) is not justified in deleting the same. It was urged for restoring the order of AO.

6. Ld. Counsel of the assessee while relying upon the order of the Ld. CIT(A) has pleaded for confirmation of the impugned order. It was further submitted that at the time when penalty was imposed, the issue was debatable and Ld. CIT(A) while considering the same has rightly concluded to delete the penalty, whose action being legally valid needs further confirmation. It was thus, pleaded for upholding the order of the Ld. CIT(A).

7. We have heard both the sides and considered the material on record as well as case laws relied upon by the Ld. CIT(A) in his impugned order and find that Ld. CIT(A) has taken a correct view of the matter while following the ratio of the decision mentioned in his order. No contrary material has been placed on record and otherwise, no infirmity or flaw has been pointed out or noticed in the order passed by the Ld. CIT(A). Therefore, while concurring with the finding and conclusion as drawn by the Ld. CIT(A), we uphold the order of the Ld. CIT(A) and dismiss the appeal of the Revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 25/6/2012, soon after the conclusion of hearing.

Sd/-

**[SHAMIM YAHYA]
ACCOUNTANT MEMBER**

Sd/-

**[U.B.S BEDI]
JUDICIAL MEMBER**

Date: 25/6/2012

SRBhatnagar

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches