आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई ।

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

BEFORE S/SHRI B.R.MITTAL,(JM) AND D.KARUNAKAR RAO (AM)

सर्वश्री बी.आर.मित्तल, न्यायिक सदस्य एवं डी. करुणाकर राव**, लेखा सदस्य के समक्ष**

आयकर अपील सं./I.T.A. No.2922/M/2012

(निर्धारण वर्ष **/** Assessment Year:2007-08)

Tanushree Basu, 202, Turf Estate, Shakit Mills lane, Off E- Moses Road, Mahalaxmi, Mumbai.	**बनाम**/ Vs.	ACIT 11(1), Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAGPB 5321 D		
(अपीलार्थी **/**Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Vishwas Mehendale
प्रत्यर्थी की ओर से/Respondent by:	Shri Manoj Kumar

सुनवाई की तारीख / Date of Hearing : 16.5.2013

घोषणा की तारीख /Date of Pronouncement : 22.5.2013

आदेश / O R D E R

Per B.R.Mittal, JM:

The assessee has filed this appeal for assessment year 2007-08 against order dated 9.2.2012 of ld CIT(A) confirming levy of penalty of Rs.5,44,540/- u/s.271(1)(c) of the Act.

2. The relevant facts are that assessee filed the return of income declaring total income of Rs.46,35,990/-, which was assessed u/s.143(3) of the Act at Rs.62,53,760/-. Assessee is a proprietor of M/s. TCB Production and engaged in the business of production of advertising commercial. The Assessing Officer made the disallowance of Rs.16,17,766/- u/s.40(a)(ia) of the I.T.Act for non deduction of tax by the assessee on various expenses and added the same to the total income of the assessee. In view of aforesaid disallowance u/s.40(a)(ia) of the Act, AO initiated penalty proceedings

u/s.271(1)(c) of the Act by rejecting the contention of the assessee that she was under bonafide belief that the impugned expenses were not subject of TDS. AO stated that it is unbelievable that assessee who is into entertainment industry for quite sometime is totally unaware both about the industry norms as well as the provisions of income tax. AO stated that it is absolutely false that she was under the bonafide belief that the impugned amount of Rs.16,17,766/- were not liable to TDS. Therefore, assessee is deemed to have concealed the particulars of her income. AO levied penalty @ 100% of tax sought to be evaded on Rs.16,17,766, which comes to Rs.5,44,540/- u/s.271(1)(c) of the Act. Being aggrieved, assessee filed appeal before ld CIT(A).

3. Ld CIT(A) confirmed the action of AO by observing that payments of expenses made on account of studio and location hire, equipment hire and editing expenses were covered by provisions of section 194-I or 194C or 194J of the Act and assessee was required to deduct TDS on such payments. Ld CIT(A) has stated that assessee has got audited books of account. However, the auditor has not mentioned about the amounts which were disallowable u/s.40(a)(ia) of the Act whereas the above expenses are clearly disallowable under the provisions of that section as no TDS was deducted thereon. Therefore, assessee deliberately claimed the deduction which was not allowable as the assessee has failed not to deduct TDS thereon. Ld CIT(A) has stated that had there been no scrutiny assessment u/s.143(3) of the Act, the particulars of income in the return of income had escaped assessment by claiming false claim. Hence, assessee is in further appeal before the Tribunal.

4. At the time of hearing, ld A.R. submitted that assessee has not concealed any particulars of income and the penalty has been levied merely by disallowing expenses on which no TDS was deducted due to bonafide belief that same was not liable to TDS provision. It was submitted that the genuineness of the payments made by the assessee is not disputed by the authorities below. Ld A.R. placed reliance on the decision of ITAT Ahmedabad Bench in the case of ACIT vs. Mazda Ltd (2012) 33 CCH 047 (Ahd Trib) and submitted that the Tribunal cancelled the penalty which was levied on account of disallowance of royalty payment and technical know how expenses after invoking section 40(a)(ia) of the Act. He submitted that case of the assessee is similar

to the facts of the case of Mazda Ltd (supra). Ld A.R. furnished a copy of the order of the Tribunal to substantiate his submission. Ld A.R. placed reliance the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts P.Ltd., 322 ITR 158(SC) and submitted that merely on account of disallowance of the claim by itself does not amount to furnishing inaccurate particulars of income. He submitted that levy of penalty should be cancelled.

5. On the other hand, ld D.R. relied on orders of authorities below.

6. We have considered submissions of ld representatives of parties and perused orders of authorities below. It is a fact that assessee has claimed expenses aggregating to Rs.16,17,766/- and same were disallowed by the AO while completing the assessment under section 143(3) of the Act on the ground that assessee failed to deduct TDS. We observe that the genuineness of the claim of the assessee has not been disputed by the department. Therefore, it cannot be said that assessee has claimed expenses which are false or not genuine. Assessee has furnished all the relevant facts concerning the claim made by it in the return filed. AO has levied penalty in respect of said amount merely because said claim of the assessee was disallowed u/s.40(a)(ia) of the Act as assessee failed to deduct TDS thereon. The Apex Court in the case of Reliance Petroproducts Ltd (supra) has held that a mere making of the claim which is not sustainable in the law, by itself will not amount to furnishing inaccurate particulars of income. In the present case, admittedly, assessee made a claim but the same was rejected and disallowed not for the reason that the claim was not genuine or was fabricated but in view of provisions of law that assessee did not deduct TDS thereon. We are of the considered that view that the ratio of judgment of Hon'ble Apex Court in the case of Reliance Petroproducts Ltd (supra) squarely applies to the facts of the case before us and, therefore, levy of penalty is not justified. We also observe that similar issue has also been considered by ITAT Ahmedabad in the case of Mazda Ltd (supra), wherein, levy of penalty u/s.271(1)(c) of the Act was cancelled which was levied on account of disallowance of claim for deduction of royalty and technical know how as per section 40(a)(ia) of the Act., as the assessee failed to deduct TDS on above payments. The ratio of the said case also applies squarely to the case before us.

7. In view of above, we hold that levy of penalty, in the facts and circumstances of the case, is not in accordance with law and same is deleted by allowing ground of appeal taken by assessee.

8. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on 22nd May , 2013 .
आदेश की घोषणा खुले न्यायालय में दिनांकः 22nd May , 2013 को की गई ।

Sd/-	sd/-
(डी. करुणाकर राव/D.KARUNAKAR RAO)	**(बी.आर.मित्तल/B.R.MITTAL)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated 22 / 05/2012
व.नि.स./ Parida , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**