

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH 'B', CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

**ITA No. 671/Chd/2014**  
(Assessment Year : 2007-08)

Radha Nutirents Limited  
Near Saha Chowk,  
Village Tela, Distt. Ambala.

Vs.

The A.C.I.T.,  
Ambala.

PAN: AAACR7985A  
(Appellant)

(Respondent)

Appellant by : Shri R. Bansal  
Respondent by : Shri Manjit Singh, DR

Date of hearing : 21.05.2015

Date of Pronouncement : 05.06.2015

**O R D E R**

**PER T.R. SOOD, A.M.:**

In this appeal, the assessee raised following ground of appeal :

“1. That the Ld.ACIT has erred in law and on facts in imposing the penalty of Rs.115640/- under section 271(1)(c) and the Ld. Commissioner of income tax (Appeals) has erred in law and on facts in confirming the order of the Ld.ACIT.”

2. During the assessment proceedings, it was noted that the assessee has raised various unsecured loans to the tune of Rs.1,11,94,359/- and on further enquiry, it was found that no confirmation was received regarding the loan from Shri

Kathirase Kumar from whom a sum of Rs.1,72,550/- and Rs.1,71,000/- was received on 29.3.2007 and 30.3.2007 respectively. The assessee could not file confirmation, etc. from this person. Therefore, unsecured loan amounting to Rs.3,43,550/- from Shri Kathirase Kumar was added to the income of the assessee under section 68 of the Income Tax Act. The penalty proceedings under section 271(1)(c) of the Act were also initiated.

3. In response to the show cause notice, the assessee submitted the following reply vide letter dated 13.5.2011, which is as under :

*“The proceeding has been initiated on the basis that the assessee could not prove beyond doubt the cash credit of Mr. Kathirash Kumar amounting to Rs.3,43,550/-. In this respect it is submitted that during the assessment proceeding the assessee has produced the evidence that the payment has been received from the depositor who is residing at USA. The payments has been received through NEFT and banking channel and was received on 29-03-2007 for Rs.1,72,550/- and on 30-03-2007 for Rs.1,71,000/-. The copy of the Bank statement in which the payment has been received is attached. It is clearly stated that the amount has been received through NEFT ICICS. During the assessment proceeding and thereafter the assessee is continually trying to contact the depositor who is an old friend of the son of the Managing Director of the Company. Due to economic meltdown during that period, the depositor shifted from USA to some other country. Now we came to know that he is in Australia. We still trying to connect for fir getting his conformation but is unable to do so jar.*

*Due to these facts the assessee in order to co-operate with the department and avoid the litigation has surrender (his amount subject to no penalty.*

*On the point of law it is respectfully submitted that the assessee neither concealed any particulars of its income nor furnished inaccurate particulars of its income. The assessee has declared this Cash Credit in the Tax Audit report. He has shown this amount as appearing in the books of accounts. The amount has been received through banking channel and a certificate from the HDFC Bank where the amount has been received confirming that the payment has been in the current account of the Radha Nutrients Ltd., in their bank from Mr. Kathirash Kumar on the 29-03-2007 and on 31-03-2007 is attached.*

*From this facts it is clear that the assessee has received the payment from the depositor and through the Banking channel. We have tried our level best to contact the depositor for his confirmation which still we are unable to collect as the depositor could not be contacted. We are still trying to contact him.*

*Considering the facts of the case that the assessee has surrendered the income subject to penalty, the more of payments and the proof, i.e., certificate and copy of the Bank statement that payment has been received through N.E.F.T. it is prayed that the proceedings may kindly be dropped or some more time be allowed to contact the depositor in order enable us to collect the confirmation.”*

4. The Assessing Officer after examining the above reply concluded that since the assessee had not produced any evidence regarding the loan and has further not given any explanation, therefore, penal action was attracted. Accordingly, he levied minimum penalty @ 100% under section 271(1)(c) of the Act amounting to Rs.1,15,640/-.

5. On appeal, it was submitted that the assessee had furnished the explanation how the loan has come through NEFT remittance in the bank. Further the assessee tried his best to contact the depositor, who had later on shifted from

U.S. to Australia. It was further submitted that the assessee has furnished bonafide explanation and, therefore, penalty could not be levied and in this regard he relied upon various decisions. The learned CIT (Appeals) did not find any force in the submissions of the assessee and confirmed the levy of penalty vide para 5 to 5.5 of his order.

6. Before us, the learned counsel for assessee submitted that the Assessing Officer has not recorded satisfaction for initiating penalty proceedings. Further he reiterated explanation given during the penalty proceedings before the Assessing Officer and the learned CIT (Appeals). It was emphasized that the assessee has given bonafide explanation and, therefore, penalty could not have been levied. He also relied upon the decision of the Hon'ble Calcutta High Court in the case of CIT Vs. Amalendu Paul, 145 ITR 439 and CIT Vs. Reliance Petroproducts Pvt. Ltd., 322 ITR 158.

7. On the other hand, the learned D.R for the Revenue strongly supported the order of the learned CIT (Appeals).

8. We have considered the rival submissions carefully. It was explained before us that the assessee has taken loan from Shri Kathirase Kumar. It was further explained that he was personal friend of the assessee and he was residing abroad and the amount had been remitted through NEFT ICICIS, which was duly reflected in the bank account. In our opinion, this cannot be called explanation. This is only a

fact regarding the receipt of loan. If the depositor was personal friend, then the assessee was supposed to know his address. Assuming for the sake of arguments that such address was not available during the assessment proceedings which was completed on 20.12.2009, the assessee could have obtained the address by May, 2014 when the impugned order was passed by the learned CIT (Appeals). Therefore, the assessee basically has not given any explanation why the confirmation, etc. has not been filed in respect of the said loan. We find no force in the submission that the Assessing Officer has not recorded satisfaction. In this regard, we would like to point out that sub-section (1B) was introduced under section 271 vide Finance Act, 2008 with retrospective effect from 1.4.1989. This sub-section reads as under :

*“(1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c).”*

8.1 A plain reading of the provision clearly shows that once the penalty proceedings have been initiated in such direction as contained in the assessment order, then it shall be deemed satisfaction of the Assessing Officer for initiation of penalty proceedings. Further the Assessing Officer has clearly mentioned at the end of para 3 that the penalty proceedings under section 271(1)(c) of the Act are being

initiated with reference to unsecured loans of Rs.3,43,550/- from Shri Kathirase Kumar. Therefore, this would itself constitute satisfaction over initiation of penalty and no further satisfaction was required to be recorded.

9. Non-furnishing of any explanation itself would lead to penal consequences. In the present set of fact the principle laid down by the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) is not applicable because merely disclosure of loan is not sufficient. The assessee has the burden of furnishing identity of the party, genuineness of the loan and capacity of the party from whom such loan was obtained, which has not been done in this case. As far as the decision of Hon'ble Calcutta High Court is concerned, that was rendered for assessment year 1963-64 i.e. before the introduction of Expenditure-1 to section 271(1)(c) of the Act. The consequences of Explanation-1 to section 271(1)(c) of the Act have been explained by the Hon'ble Supreme Court in the case of K.P.Madhusudhanan Vs. CIT, 251 ITR 99, where it is clearly observed that after introduction of Explanation-1 to section 271(1)(c) of the Act, there is no burden on the Revenue to prove that the assessee has concealed the particulars of income. It is further observed that this part would be covered by the Explanation and the burden lies on the assessee to give explanation regarding the particulars entry. Therefore, in our opinion, in this case, penalty has been rightly levied and confirmed by

the learned CIT (Appeals) because the assessee has failed to give any explanation regarding the said loan.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this 5<sup>th</sup> day of May, 2015.

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Sd/-  
**(T.R.SOOD)**  
**ACCOUNTANT MEMBER**

Dated : 5<sup>th</sup> May, 2015

\*Rati\*

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,  
ITAT, Chandigarh