

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI

Before Shri Saktijit Dey, Judicial Member &
Shri Ramit Kochar, Accountant Member

ITA Nos.1705 & 1707/Mum/2017
Assessment Years : 2011-12 & 2009-10

Shri Suresh Shivilal Bhasin, 301 Green Acres, Lokhandwala Complex, Andheri (W), Mumbai 400 053. PAN AADPB0721E (Appellant)	Vs.	Asst. CIT 25(1), Mumbai (Respondent)
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Appellant By : None

Respondent By : Shri Chaudhary Arun Kumar Singh

Date of Hearing : 13.11.2018

Date of Pronouncement : 30.11.2018

ORDER

Per Saktijit Dey, Judicial Member

The aforesaid appeals by the assessee are against two separate orders of learned CIT(A)-37, Mumbai, confirming penalty imposed u/s. 271(1)(c) of the Act for the A.Ys 2009-10 and 2011-12.

2. When the appeals were called for hearing no one was present on behalf of the assessee inspite of hearing notice issued by the Registry through registered post. On the previous occasion also when the appeal was fixed for hearing no one appeared for the assessee. In the aforesaid circumstances, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned DR.

3. Briefly, facts which are more or less common in both the appeals are as follows. The assessee, an individual, filed his return of income for A.Y. 2009-10 on 25.09.2009 declaring total income at ₹ 1,25,39,250/-. In the course of assessment proceedings, the Assessing Officer noticing that the assessee has claimed interest expenditure of ₹ 11,81,282/- against interest income from fixed deposit, disallowed the same. Similarly, the Assessing Officer added an amount of ₹ 7,426/- on account of notional income from house property. Thus, in the process, the Assessing Officer determined the total income at ₹ 1,37,29,960/- for A.Y. 2009-10. For A.Y. 2011-12, the assessee filed his return of income on 23.09.2011, declaring total income of ₹ 96,68,780/-. As was the case in A.Y. 2009-10, in A.Y. 2011-12 also the Assessing Officer disallowed interest expenditure of ₹ 30,95,365/- claimed against interest income from fixed deposit and made addition of ₹ 2,12,436/- on account of notional income from house property. In the process the total income was determined at ₹ 1,29,66,590/- . On the basis of aforesaid additions made, the Assessing Officer initiated proceedings for imposition of penalty u/s. 271(1)(c) of the Act in both the assessment years. In response to the show cause notice issued by the Assessing Officer, though, the assessee furnished explanation objecting to the imposition of penalty, the Assessing Officer rejected the explanation of the assessee and imposed penalty u/s. 271(1)(c) of the Act for an amount of ₹ 4,04,721/- in A.Y. 2009-10 and ₹ 10,19,021/- in

A.Y. 2011-12 alleging concealment of income and furnishing of inaccurate particulars of income. Being aggrieved of the penalty orders so passed, assessee preferred appeal before the learned CIT(A). However, the learned CIT(A) also confirmed the penalty imposed u/s. 271(1)(c) of the Act in both the assessment years under appeal.

4. The learned DR relied upon the observations of the departmental authorities.

5. We have heard the learned DR and perused the material on record. As could be seen from the facts on record, the imposition of penalty u/s. 271(1)(c) of the Act in both the assessment years were made on the basis of additions on account of disallowance of interest expenditure and notional house property income. In so far as disallowance of interest expenditure is concerned, as could be seen from the submissions made by the assessee before the learned CIT(A), the assessee has availed of overdraft facility from Dena Bank and out of the funds borrowed from overdraft account investment was made in taxable bonds of RBI as well as fixed deposit. It is further evident from the submissions of the assessee, against the interest income earned from taxable bonds and fixed deposits, which was offered as income, assessee has set off the interest expenditure incurred on account of funds borrowed from the overdraft account. This claim of set off of interest expenditure against interest income has been rejected by the Assessing

Officer in course of assessment proceedings. Thus, as could be seen from the facts on record, under a bona fide belief that interest expenditure incurred on the overdraft facility is allowable against the interest income earned by investing the funds borrowed from the overdraft account assessee has claimed the expenditure. This, in our view, neither leads to furnishing of inaccurate particulars of income nor concealment of income. Hence, assessee's explanation that the conditions of section 271(1)(c) of the Act are not satisfied appears to be plausible. That being the case, no penalty u/s. 271(1)(c) of the Act can be imposed on account of disallowance of interest expenditure. As regards imposition of penalty on the addition made on account of notional house property income, it goes without saying that in reality the assessee has not earned any income from house property. The Assessing Officer himself has observed that the addition made on account of income from house property is notional. In that view of the matter, penalty u/s. 271(1)(c) of the Act cannot be imposed in respect of addition made on account of notional income from house property. Thus, on over all consideration of facts and circumstances, we are of the opinion that imposition of penalty u/s. 271(1)(c) of the Act, in the facts of the present appeals is not justified. Accordingly, we delete the penalty imposed u/s. 271(1)(c) of the Act in both the assessment years under appeal.

6. In the result, both the appeals are allowed.

Order pronounced in the open court on this day of 30th November, 2018.

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Mumbai, Dated : 30th November, 2018.

Sd/-
(Saktijit Dey)
JUDICIAL MEMBER

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'G' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai