

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 6728/Del/2017 : Asstt. Year : 2011-12

Plaza Partners, 301-303, Mercantile House, 15, K.G. Marg, New Delhi-110001	Vs	ACIT, Circle-52(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAFFP2318B		

Assessee by : None

Revenue by : Sh. Apoorva Bhardwaj, Sr. DR

Date of Hearing: 04.02.2021	Date of Pronouncement: 02.03.2021
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-XXVI, New Delhi dated 21.05.2014.

2. Following grounds have been raised by the assessee:

"1. *That on facts and in the circumstances of the case, the Id. CIT(A)-18, New Delhi, erred in law in upholding the order of the Ld. AO, imposing penalty of Rs.3,21,013/- (Three Lakh Twenty One Thousand Thirteen only), u/s 271(1)(c) of the Act read with Explanation 1 thereto, levied without recording proper satisfaction in terms of provision of Section 271(1)(c) read with section 274 of the Income Tax Act, 1961.*

1.1 *That the impugned penalty order of the AO is invalid and void ab initio, since framed in absence of recording of specific satisfaction or*

levying of specific charge as to concealment of income or furnishing of inaccurate particulars of income, in the notice issued u/s 274 of the Act.

1.2 That the Id. CIT(A) in an arbitrary manner, on wholly erroneous, illegal and untenable grounds, without adhering to principles of natural justice, has upheld the impugned penalty order.

2. That on facts and in the circumstances of the case the Id. CIT(A), erred in law in upholding the penalty levied on ad-hoc disallowance, upheld by the Id. CIT(A), in the quantum appeal.

3. That the order dated 31.08.2017 of the Id. CIT(A) passed u/s 250(6) of the Act is bad in law.

3. In the P&L A/c, the assessee has credited the various incomes including the amount of interest income of Rs.1,23,72,496/- and has debited following expenditure:

Loss from sale of units of mutual funds	Rs.33,48,676/-
Provision for diminution/(gain) in value of investment	Rs.19,296/-
Donation	Rs. 50,00,000/-
Legal & professional	Rs.32,04,530/-
Payment to auditor	Rs. 30,000/-
Service tax	Rs.3,090/-
Service charges - office maintenance	Rs.27,00,000/-
Security transaction tax - mutual funds	Rs.2,65,915/-
Maintenance charges	Rs.66,592/-
Other expenses	Rs.2,715/-
Total	Rs. 1,46,40,814/-

4. Out of the above, the assessee has claimed part of the "service charges-maintenance expenses" on proportionate basis amounting to Rs.11,88,878/- against "income from other sources".

5. The assessee vide its letter dated 25.03.2013 submitted that during the year under assessment, the assessee firm has earned interest income of Rs.1,23,72,496/- shown under the head income from other sources, it is further submitted that out of the total expenses of Rs.27,00,000/- the assessee firm has claimed proportionate expenses amounting to Rs.11,88,878/- against the said Income u/s 57 (iii) of the Income Tax Act, 1961.

6. The balance expenses amounting to Rs.15,11,122/- have been allocated towards exempt income of Rs.1,57,26,057/- representing dividend income exempt u/s 10(34) /(35) of the Act.

7. It was submitted that the claim of expenses is both bonafide and reasonable, expended wholly and exclusively for the earning of such income in terms of Section 57(iii) of the Income Tax Act, 1961. In support of its claim, the assessee relied on the following decisions:

- *CIT vs. Taj International Jewellers (2011) 335 ITR 144 (HC)*
- *CIT vs. New Savan Sugar and Gur Refining Co. Ltd. 185 ITR 564 (HC)*
- *CIT vs. Trustees of the Nizam Misc's Trust 160 ITR 253 (AP).*

8. It was argued that since the expenses incurred and claimed as deduction u/s 57(iii) of the Act, as per the Computation of Income enclosed are primarily, relating to running and administering the assessee firm, the same are allowable as deduction u/s 57(iii) of the I. T. Act, 1961.

9. The Assessing Officer held that as far as the claim of expenditure made by assessee U/s 57 is concerned, the same is to be allowed in accordance to the provision of section 57 of the Income-tax Act, 1961. The AO held that before application of section 57, the following conditions must be fulfilled as the dominant purpose of the expenditure incurred must be to earn income:

- The expenditure must have been incurred solely and exclusively for the purpose of earning income or making profit.
- The expenditure should not be in the nature of a capital expenditure.
- The amount in question should not be in the nature of personal expenses of the assessee.
- The expenditure should be incurred in the accounting year.
- There must be a clear nexus between the expenditure incurred and the income sought to be earned.
- After examining the conditions enumerated above, the AO held that,
- The incurring of expenditure on 'service charges' & 'maintenance expenses' is nothing to do with earning of interest income and it has infact not incurred solely and exclusively for the purpose of earning interest.

- As the amount of 'service charges' & 'maintenance expenses' is not related to the earning of income chargeable under the head 'income from other sources', the same has to be treated as not incurred solely and exclusively for the purpose of earning income. It was also held that there was no nexus between the expenditure incurred and income sought to be earned as the income has been earned on deposit with ICICI Bank and loan given to Shri Dhiraj Sarna & Shri Shakti Singh @ 4% P.A. and the 'service charges' & 'maintenance expenses' have been incurred in connection with overall establishment of the assessee firm.

10. The AO held that as per the above condition required for allowing deduction u/s 57 of the Income-tax Act, 1961 on the expenditure of 'service charges' & 'maintenance expenses' has not been incurred in connection with making investment in deposit with ICICI bank or loan / advance given to Shri Dhiraj Sarna & Shri Shakti Singh and disallowed the expenditure.

11. The revenue relied on the case of CIT v. Gopinathan (Dr. V.P.) (1998) 229 ITR 801 (Ker), wherein it was held that the taxing authority is entitled and is bound to determine the true legal relation with reference to the transaction of making a deposit and borrowing on such deposit and in the process, the authority has to unravel the state of affairs to determine the true character of the relationship and the process has to be by a probe into the substance of the transaction. In Kaviraj Mahipat Singh v. CIT 255 ITR 470 (2002) (Raj) where the assessee had taken a loan against fixed deposit and used 70%

of the loan for construction of a house and balance for his business, it was held that to the extent to which it was used for business, it was allowed as a deduction and not the interest portion pertaining to personal use. We find that the ratio is applicable to disallowance but not to levy of penalty u/s 271(1)(c).

12. We have gone through the order of the Assessing Officer at para 6.6 which is as under:

"Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for concealment of income as aforesaid and furnishing inaccurate particulars within the meaning of explanation 1 to the Sub-Section (1) of the Section 271(1)(c) of the Act are initiated."

13. We have also gone through the last page of the order wherein the Assessing Officer held as under:

"Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for concealment of income as aforesaid and furnishing inaccurate particulars within the meaning of explanation 1 to the Sub-Section (1) of the Section 271(1)(c) of the Act are initiated. Notice u/s 271(1)(c) read with Section 274 of the Act is being issued separately."

14. We have gone through the penalty order wherein the penalty of Rs.3,21,013/- has been levied by the Assessing Officer.

15. Para no. 5 of the penalty order reads as under:

"5. Since, prima facie, provisions of Section 271(1)(c) were attracted, after recording satisfaction of AO in assessment order & CIT(A) order penalty proceedings u/s 271(1)(c) were initiated for concealing particulars/ submitting inaccurate-particulars on account of disallowance on income from other sources under Sec. 57 thereby concealing

income vide assessment order dt. 29.03.2013 and CIT(A) order dt. 21.05.2014, notices u/s 274 r.w.s. 271(1)(c) of the IT Act were issued on 29.03.2013, & 25.01.2016."

16. Further, we have gone through the para 9 of the penalty order which reads as under:

"9. I, therefore, hold that the assessee had furnished inaccurate particulars of income thereby concealing true particulars of income as discussed above and penalty u/s 271(1)(c) is leviable in this case."

17. From the concurrent reading of all the paras mentioned above in the assessment order as well as the penalty order, we find that the revenue has not specified under which limb of Section 271(1)(c) the penalty has been levied. It is elementary that for assuming valid jurisdiction to impose penalty, the Assessing Officer must, first be satisfied, though *prima facie*, that the assessee has either "concealed income" or furnished "inaccurate particulars of income" and on the basis of such satisfaction a show cause notice has to be issued u/s 274 of the Act to the assessee specifying the addition/ disallowance in respect of which penalty is sought to be imposed and also the precise charge/ ground on which penalty is proposed to be imposed thereon.

18. Further, we find that in the instant case, the particulars of expenses have been duly provided in the P&L account and has also provided the basis of apportionment of these expenses. Hence, it cannot be said that the assessee has furnished "inaccurate particulars of income". The disallowance made by the Assessing Officer cannot be treated as "concealment" too. Mere disallowance of an expense cannot lead to levy of penalty u/s 271(1)(c).

19. On going through the entire facts and circumstances of this specific case, we are of the firm opinion that this is not a fit case for levy of penalty u/s 271(1)(c) of the Act.

20. As a result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 02/03/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 02/03/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR

TAXPUNDIT.ORG