

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

श्री बी. आर. भास्करन, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI B. R. BASKARAN, AM AND SHRI SANJAY GARG, JM

आयकर अपील सं./I.T.A. No. 6684/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2007-08)

Rushi Builders and Developers Hotel Bay View, Gorai Khadi, L. T. Road, Borivali (W), Mumbai-400 091	बनाम/ Vs.	Asst. CIT-15(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAHFR 4343 J		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri Love Kumar
सुनवाई की तारीख / Date of Hearing	:	04.03.2015
घोषणा की तारीख / Date of Pronouncement	:	04.03.2015

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the assessee against the order of the Id. CIT(A)-26 dated 13.08.2012. The assessee has agitated the sustaining of the levy of penalty at Rs.3,83,890/-.

2. The brief facts of the case are that during the assessment proceedings it was observed by the A.O. that the assessee had claimed deduction of interest expenses of Rs.11,40,492/- without deducting TDS. He, therefore, made a disallowance of the said

expenditure as per the provision of section 40(a)(ia) of the Act. The penalty proceedings u/s.271(1)(c) of the Act were also initiated. In the penalty proceedings, the assessee submitted before the A.O. that there was only a technical lapse on the part of the assessee in non production of proof of Forms No. 15G, which were misplaced and not traceable. The assessee also submitted that certain payments of interest were made to HUF's and the assessee was under *bona fide* belief that the payments of interest to HUF did not call for any deduction of tax at source. The A.O., however, did not agree with the submissions of the assessee and held that the assessee had furnished wrong particulars of income and thereby had concealed its income. He, therefore, levied the impugned penalty u/s.271(1)(c) of the Act.

3. In the first appeal, the Id. CIT(A) confirmed the penalty so levied by the A.O. The assessee is thus in appeal before us.

4. We have heard the rival contentions and have also gone through the records. In this case, the penalty has been levied for disallowance of expenditure u/s.40(a)(ia) of the Act. It is not a case of furnishing of inaccurate particulars of income or concealment of income. The failure to deduct the TDS on the part of the assessee has resulted in disallowance of expenditure. The assessee had not furnished any inaccurate particulars of income or expenditure. The assessee has already faced the consequences by way of disallowance of expenditure for non-deduction of TDS as per the provisions of section 194C of the Act. It is not the case of the Revenue that the assessee had not incurred the expenditure claimed or that the claim of expenditure was bogus or incorrect. The disallowance of expenditure was attracted due to non-deduction of TDS and it cannot be said to be a case of concealment of income or furnishing of inaccurate particulars of income. The levy of penalty u/s.271(1)(c) of the Act is not attracted in this case and the same is accordingly ordered to be deleted.

5. In the result, the assessee's appeal is hereby allowed.
परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on March 4, 2015

Sd/-

(B. R. Baskaran)

लेखा सदस्य / Accountant Member

Sd/-

(Sanjay Garg)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 04.03.2015

व.नि.स./Roshani, 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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai