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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.5167/Del/2011
Assessment Year : 2007-08

M/s GSJ Envo Limited,
290-L,
Model Town,
Panipat.
PAN : AAACG6001G.

Vs. Dy.Commissioner of
Income Tax,
Panipat Circle,
Panipat.

(Appellant)

(Respondent)

Appellant by

: Ms.Rano Jain, FCA.

Respondent by

: Shri Salil Mishra, Sr.DR.

ORDER

PER G.D.AGRAWAL, VP :

This appeal of the assessee is directed against the order of learned CIT(A) dated 14th September, 2011 for the assessment year 2007-08 challenging the imposition of penalty under Section 271(1)(c).

2. The assessee in the present case is a civil contractor and is engaged in civil works of constructing sewage treatment plant, storm water development, construction of underground reservoirs and booster pumping stations on turnkey basis at various sites at different stations of civil contract. During the year under consideration, the assessee had given interest free advance of ₹1,30,500/- to M/s Khurana & Sons, HUF, one of the directors of the assessee company without any interest. The Assessing Officer held that the same was not in the nature of a trade advance and he disallowed 11% of the interest paid to bank amounting to ₹14,355/-. He also initiated penalty proceedings under Section 271(1)(c). During penalty proceedings, it was submitted



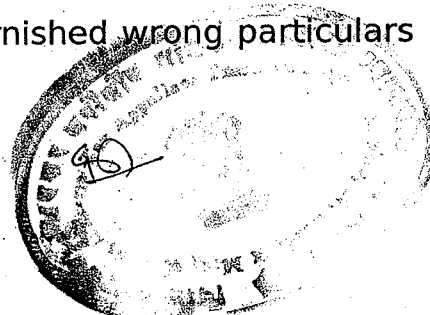
by the assessee that no inaccurate particulars of income were filed by it. The arguments of the assessee were not accepted by the Assessing Officer and he held that the assessee has furnished inaccurate particulars of its income and levied a penalty of ₹4,833/-.

3. In appeal before the learned CIT(A), he sustained the penalty. Hence, this appeal by the assessee.

4. At the time of hearing before us, the learned counsel for the assessee submitted that the Assessing Officer has not given any reason or justification as to how assessee furnished inaccurate particulars of his income. All the relevant details were filed alongwith the return of income. Reliance has been placed on Hon'ble Supreme Court judgment in the case of CIT Vs. Reliance Petroproducts Pvt.Ltd. – 322 ITR 158 for the proposition that unless the assessee files inaccurate particulars in the return of income, it cannot be held to have filed inaccurate particulars.

5. The learned DR, on the other hand, supported the orders of the authorities below and contended that the assessee on one hand has borrowed funds for its business needs and has claimed payment of interest thereon but, on the other hand, it had made interest free advance to the HUF of one of its directors. The same, therefore, cannot be termed as a bona-fide claim and the penalty under Section 271(1)(c) has been rightly levied for filing inaccurate particulars of income.

6. We have carefully considered the arguments of both the sides and perused the relevant material on record. In the case of Reliance Petroproducts Pvt.Ltd. (supra), the Hon'ble Supreme Court has clearly held that if the assessee has furnished wrong particulars in the return



of income, the penalty can be imposed. However, in case the assessee makes a bona-fide legal claim, the same cannot be held liable for penalty. On this principle, Hon'ble Supreme Court deleted the penalty in the case of Reliance Petroproducts Pvt.Ltd. (supra). The assessee in the present case has disclosed all relevant particulars of its income and there was no concealment of facts or filing of inaccurate particulars of income. The income declared was duly supported by a copy of audited financial statement and audit report under Section 44AB of the IT Act. The authorities below have not brought any material to show that the assessee has concealed any particulars of its income or furnished inaccurate particulars. In our view, the judgment of Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt.Ltd. (supra) is applicable to the facts of the present case. Respectfully following the same, we reverse the orders of authorities below and delete the penalty imposed under Section 271(1)(c).

7. In the result, the appeal of the assessee is allowed.

Decision pronounced in the open Court on conclusion of hearing on 23rd January, 2012.

Sd/r
(A.D.JAIN)
JUDICIAL MEMBER

Sd/r
(G.D.AGRawal)
VICE PRESIDENT

Dated : 23.01.2012
VK.

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1. Appellant *[Signature]*
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

[Signature]
Assistant Registrar
सहायक पंजीकार

Assistant Registrar
आयकर अपील अदालत

Income Tax Appellate Tribunal
नई दिल्ली/ New Delhi





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