

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC 1' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2267/DEL/2019 (A.Y 2015-16)

UMG Properties Pvt. Ltd. A-60, Naraina Industrial Area, Phase-1 New Delhi PIN: 110028 AAACU9679G (APPELLANT)	Vs	ACIT Circle-27(1) New Delhi (RESPONDENT)
--	----	--

Appellant by	None
Respondent by	Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing	05.03.2020
Date of Pronouncement	04 .05.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 14/1/2019 passed by CIT(A)- 28, New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

“ 1. The Ld. CIT(A) has wrongly concluded that the appellate willfully and deliberately concealed its income. The conclusion is incorrect both on facts and in law and hence the penalty u/s 271(1)(c) needs to be deleted.”

3. In this case, assessment proceedings completed by Assessing Officer on 6/12/2017 determining the loss of Rs, 11,36,532/- against the returned loss

of Rs. 98,30,697/- declared by assessee in the return filed on 29.09.2015. During the assessment proceedings, it was observed by the Assessing Officer that the assessee company has claimed expenses under the head Finance Cost amounting to Rs. 86,94,165/- consisting of Interest expenses of Rs. 74,02,025/- and loan processing fees of Rs. 12,92,140/-. The Assessing Officer asked the assessee to justify the claim of expenses, to which it was replied that the assessee company had taken loan against property from M/s. Hero Fincorp Ltd. and paid interest thereon and capitalized the said expenditure upto the date of acquisition which amounted to Rs. 14,84,895/- but inadvertently in the return Rs. 85,05,595/- was claimed as interest. However, the Assessing Officer was not convinced with the explanation of assessee on the ground that the assessee company was not carrying on any business activity during the year as well as in earlier years, therefore, expenses claimed by it cannot be allowed. Therefore, the Assessing Officer disallowed the total expenses amounting to Rs. 86,94,165/- and added back to the income of the assessee. Against the said disallowance by the Assessing Officer, no appeal was filed by assessee. In the meanwhile, the Assessing Officer initiated the penalty proceedings u/s 271(l)(c) of the Act and provided opportunity to assessee by issuing the notice under the said section. However, initially the assessee failed to avail the opportunity but subsequently explained that it was merely difference of opinion and therefore, penalty is not leviable in its case. The Assessing Officer was not convinced with the explanation of the assessee and after considering the merit of the additions and relying on the decision of Jurisdictional High Court in the case of CIT Vs. Zoom Communication Pvt. Ltd. alongwith other decisions of different Courts, concluded that the assessee has furnished inaccurate particulars of income leading to the concealment of income to the extent of Rs. 86,94,165/- and imposed the penalty of Rs. 26,86,497/-, being 100% of the tax sought to be evaded on the above income and passed the order.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. None appeared on behalf of the assessee and there is no adjournment application on behalf of the assessee. The notice has been served to the assessee. Therefore, we are taking up the submissions of the assessee before the CIT(A) as well as before the Assessing Officer.

6. The Ld. DR relied upon the assessment order, penalty order and the order of the CIT(A).

7. We have heard the Ld. DR and perused the material available on record. It is pertinent to note that in this case, the assessee company had taken loan against property from M/s. Hero Fincorp Ltd. and paid interest thereon and capitalized the said expenditure upto the date of acquisition which amounted to Rs. 14,84,895/- but inadvertently in the return Rs. 85,05,595/- was claimed as interest. However, the Assessing Officer was not convinced with the explanation of assessee merely on the ground that the assessee company was not carrying on any business activity during the year as well as in earlier years, therefore, expenses claimed by it cannot be allowed. Therefore, the Assessing Officer disallowed the total expenses amounting to Rs. 86,94,165/- and added back to the income of the assessee. This does not amount to furnishing of inaccurate income or concealment of income as envisaged in Section 271(1)(c) of the Income Tax Act, 1961. The Assessee has explained before the Assessing Officer and the CIT(A), that the business activity of the assessee is investment in real estate business and the same constitutes the business activity. The Assessing Officer as well as the CIT(A) only proceeded on the basis that there was no income during the year therefore there is no business activity, but the same is fallacy and cannot be taken as the basis for imposing the penalty. Thus, provisions of Section 271(1)(c) are not applicable in the present case. Hence, the penalty order does not sustain. The appeal of the assessee is allowed.

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

Order pronounced in this 04th Day of May, 2020.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 04/05/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.03.2020
Date on which the typed draft is placed before the dictating Member	18.03.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	13.05.2020
Date on which the file goes to the Bench Clerk	13 .05.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	