

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1989/Ahd/2018

(निर्धारण वर्ष / Assessment Years : 2011-12)

<b>Deem Roll-Tech Limited</b> C/3/301-Anushruti Apartment, Opp. New Yourk Tower, Nr. Jain Mandir, S. G. Highway, Thaltej, Ahmedabad - 380054	<b>बनाम/ Vs.</b>	<b>The Deputy Commissioner of Income Tax</b> Circle-1(1)(2), 3 <sup>rd</sup> Floor, Pratyakshkar Bhawan, Ambawadi, Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCD9176A</b>		
<b>(अपीलार्थी /Appellant)</b>	<b>..</b>	<b>(प्रत्यर्थी / Respondent)</b>

<b>अपीलार्थी ओर से /Appellant by :</b>	Shri P. F. Jain, A.R.
<b>प्रत्यर्थी की ओर से / Respondent by :</b>	Shri Vinod Tanwani, Sr.D.R.

<b>सुनवाई की तारीख / Date of Hearing</b>	02/03/2020
<b>घोषणा की तारीख /Date of Pronouncement</b>	03/03/2020

**आदेश/ORDER**

**PER T. S. KAPOOR - AM:**

This is an appeal filed by the assessee against the order of learned CIT(A)-1, Ahmedabad, dated 08/08/2018 relating to assessment year 2011-12.

2. The only ground taken by the assessee in this appeal is the action of learned CIT(A) by which he has confirmed the penalty which the AO had imposed under s.271(1)(c) of the Act.

3. The brief facts as placed in the record are that during assessment proceeding, the AO made three additions as follows: (i) addition on account of new share capital Rs.35Lakhs; (ii) disallowance out of interest expenses Rs.1,51,697/-; & (iii) disallowance out of interest Rs.12,020/-. The AO further imposed penalty of Rs.12,05,630/- @ 300% on income sought to be evaded.

4. Aggrieved by the penalty, the assessee filed appeal before the learned CIT(A) who relied on the Tribunal's decision in favour of the assessee in respect of share capital and therefore the penalty was deleted, however, he confirmed the penalty on account of disallowance out of interest expenses.

5. Aggrieved, the assessee is in appeal before us.

6. The learned AR, at the outset, invited our attention to the copy of balance sheet placed in paper book page no.10 and submitted that there was a total interest free funds in the form of capital and reserve to the extent of Rs.12.85Crores and against which only Rs.9 Lakhs was advanced as interest free advances. Therefore, it was submitted that the assessee had sufficient interest free funds out of which it could have given interest free advances. The learned AR further submitted that all details and particulars were before the AO and from those particulars only the AO arrived at the conclusion that assessee had diverted interest bearing funds to non interest bearing funds and therefore, it

cannot be said that it is a case of concealment of income or furnishing of wrong particulars of income. Therefore, it was prayed that the penalty sustained by the learned CIT(A) be deleted.

7. The learned DR, on the other hand, relied upon the authorities below.

8. We have heard the rival parties and have gone through the material placed on record. We find that it is a fact that sufficient interest free funds were available with the assessee as is coming out from balance sheet placed in paper book page no.10. The assessee had huge interest free funds to the tune of Rs.12.85Crores and against which meager amount was advanced on which assessee had not charged any interest. Therefore, keeping in view the judicial precedents, the interest was not disallowable but since the Hon'ble Tribunal had sustained the disallowance though on a different reason, we do not want to further go into this aspect. Moreover, we find that the AO had worked out the disallowance only on the basis of documents filed by the assessee in the form of balance sheet and profit & loss account. It is only a case of opinion on the part of AO that he held that assessee had diverted interest bearing funds to interest free advances ignoring the fact that assessee had huge interest free reserves. The Assessing Officer therefore held that assessee had made wrong claim and therefore he imposed the penalty whereas the fact remains that penalty was imposed by calculating notional interest on interest free advances. The assessee of course had not concealed any particulars of income. Even if, we agree with the authorities below that assessee had made wrong claim

even then mere wrong claim cannot tantamount to furnishing of inaccurate particulars of income or concealment of income as held by Hon'ble Supreme Court in the case of *Reliance Petro products Pvt. Ltd. (322 ITR 158) (SC)*. In view of these facts and circumstances, we hold that penalty sustained by learned CIT(A) is not as per law. Therefore, we delete the same. In the view of the above, the appeal filed by the assessee is allowed.

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

<b>This Order pronounced in Open Court 03/03/2020</b>
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Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT  
Ahmedabad: Dated 03/03/2020

Sd/-  
(T. S. KAPOOR)  
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।