

Case :- INCOME TAX APPEAL No. - 125 of 2002

Appellant :- J.K. Synyhetics Ltd.

Respondent :- The Commissioner, Of Income Tax,

Counsel for Appellant :- R.S. Agrawal

Counsel for Respondent :- A.N. Mahajan, Ashok Kumar, Bharatji Agarwal, D.

Awasthi, G. Krishna, R.K. Upadhaya, S Chopra

Hon'ble Bharati Sapru, J.

Hon'ble Vinod Kumar Misra, J.

Heard Shri S.D. Singh, learned Senior Counsel assisted by Shri R.S. Agrawal, learned counsel for the appellant and Shri Shubham Agrawal, learned counsel for the department.

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 against the order passed by the Tribunal dated 26.06.2002 for the assessment year 1982-83.

The questions of law sought to be answered by the order of this Court dated 19.07.2007 read as under:

"i Whether the order of the ITAT, upholding the levy of penalty under Section 271(1) (c) to the extent mentioned therein, is not vitiated in law by non-consideration of material and information that was available on record as also the applicability of relevant provisions of law?

ii. Whether the Tribunal was legally justified, on the facts and circumstances of the case, particularly that;

(a) full facts relating to the claims made by the assessee had been disclosed;

(b) no inaccuracy or falsity in such claims was attributable to the assessee; and

(c) bonafide of the assessee in making such claims was not in dispute;"

The facts of case are that the assessee/appellant is a public limited company engaged in the manufacture and sale of synthetic yarn, cement etc. For the business so carried on by it, the assessee/appellant has been observing calendar year as its accounting year/previous year. Accordingly, for the assessment year 1982-83 which is the year under appeal, the assessee/appellant had closed its accounts on 31st December 1981.

The assessee for all its activities had maintained the books of

account and other record in regular course, which were subjected to statutory audit also under the relevant provisions of the Companies Act. On the basis of audited statement of account, it had filed a return declaring a loss of Rs. 5,65,13,579/-. As against this, the assessment was completed at an income of Rs.15,28,83,602/- after making various additions/disallowances, vide regular assessment order dated 29.03.1985. With the completion of assessment (at such a high pitched figure) the penalty proceedings under Section 271 (1) (c) of the Income Tax Act (hereinafter referred to as the 'Act') were initiated by making following narration:-

"It is further noticed that the assessee has committed the default u/s 271(1)(c). It concealed the particulars of its income and also furnished inaccurate particulars of such income e.g. disallowances u/s 40A(5), guest house expenses, provision on account of excise duty and other liabilities, excise duty refund, depreciation allowance etc. etc."

The assessment so made was subject-matter of appeal firstly before the Commissioner of Income-tax (Appeals), New Delhi and then before the ITAT, New Delhi. After giving effect to the order of ITAT dated 1.1.1990, the income was finally determined at Rs.1,65,82,800/- which fact by itself is a pointer to the wild variation between the income assesseed and income determined from the stage of ITAT. Even the income so determined has not attained finality as cross references have been allowed under Section 256(1)/256(2) of the Income Tax Act and the matters are pending before the Hon'ble Delhi High Court.

After the order passed by the ITAT in the quantum proceedings became available, the penalty proceedings under Section 271(1)(c) of the Act as had been initiated on completion of regular assessment on 29.03.1985 in terms of the narration that has been referred above, were pursued by the Assessing Officer, in relation to disallowances of sums aggregating Rs.98,90,300 (out of assessed income of Rs.1,65,82,800) as stood sustained from the stage of the ITAT. During the course of such proceedings, the assessee/appellant objected to the proposal to levy penalty under Section 271(1) (c) of the Act and made specific averments to the effect that

the assessee had neither concealed the particulars of its income nor had filed inaccurate particulars thereof. In support of this contention, detailed explanation in relation to each item as comprised in the disallowances aggregating of Rs.98,90,300 which had been sought to be made the basis of levying penalty under Section 271(1) (c) of the Act was submitted before the assessing officer.

The submissions so made by the assessee/appellant at the stage of the Assessing Officer were not found to be acceptable and the Assessing Officer levied a penalty of Rs.60,00,000.

Against the said penalty order, the assessee/appellant preferred an appeal before the C.I.T. (Appeals), New Delhi who decided the same vide order dated 15.11.1993. After examining the explanation submitted by the assessee/appellant, in response to the show-cause notice, he recorded a categorical finding that all the expenses/claims aggregating Rs.98,90,300/- disallowances of which had been made the basis of levying penalty under Section 271 (1) (c) of the Act in terms of order dated 04.10.1990 had actually been incurred and no falsity or inaccuracy as such could be attributed to the assessee's claim. It was further held by the first appellate authority that the explanation-1 to Section 271 (1) (c) of the Act was basically a deeming provision and the same could not have been read in isolation with the main penal provision. It was only after such findings, he cancelled the penalty under Section 271(1) (c) of the Act.

Aggrieved by the order dated 15.11.1993 as passed by the first appellate authority, the revenue preferred a second appeal before the ITAT.

During the course of hearing of appeal filed by the revenue, no material whatsoever was placed from the side of the revenue to displace the findings recorded by the first appellate authority.

The ITAT has reversed the order of the first appellate authority

to the extent that the penalty under Section 271(1) (c) of the Act was leviable in relation to five items of disallowance.

At the present stage only item nos.12 & 13 on which penalty has been sought to be imposed are subject matter of discussion in this appeal as learned Counsel for the department has sought to argue that the penalty, which was imposed on items no.12 & 13 was justified in view of the fact that insofar as the item no.12 is concerned the claim made by the assessee would not constitute a valid claim under the provisions of Section 35 (2) (b) Explanation (iv) of the Act, but at the same time learned Counsel for the department also does not deny the fact that the very provision was under challenged before the Supreme Court and also its retrospectivity was also been challenged and the Hon'ble Apex Court had also granted stay order in this matter and in any view of the matter, the matter was a debatable one at the relevant time i.e. the time relating to the period of assessment.

Learned Counsel for the assessee has sought to argue that the imposition of penalty under Section 271 (1) (c) of the Act clearly contemplates that the penalty may be imposed only in cases where there has been some false declaration or where there has been some concealment of facts.

Learned Counsel for the assessee has drawn the attention of this Court to the findings recorded by the CIT, which records as hereunder:-

"Similarly, item no.9 to 15 were provided with a disallowance by the Assessing Officer as mentioned in the preceding para. On going through the explanation I find that the expenditure related to all the 15 items mentioned above were really incurred by the appellant and there is no falsity or inaccuracy under consideration. The appellant company filed all the particulars regarding claims and these particulars are correct and accurate."

The Tribunal while dealing with these items has not in any manner whatsoever disputed this finding of fact.

The second objection made by learned Counsel for the department is that at the time of appellate stage the assessee gave up the issue of travelling expenses but then again learned

Counsel for the assessee argues that the giving up of the claim at the stage of appeal for income purposes would not mean or suggest in any manner that the claim, which had been made by it was either false or that it smacked any kind of concealment in order to attract penalty under Section 271 (1) (c) of the Act.

Learned Counsel for the assessee has placed reliance on a decision of Hon'ble Apex Court in the case of ***CIT vs. Reliance Petroproducts Private Ltd. reported in (2010) 11 SCC 762*** and has drawn the attention of this Court to paragraphs no.18 & 19 of the decision where the Hon'ble Apex Court has held that in a case where there was no finding that there were any details supplied by the assessee, which were found to be incorrect or erroneous or false, it would not attract penalty under Section 271 (1) (c) of the Act. A mere making of a claim, which is not sustainable in law by itself would not amount to furnishing inaccurate particulars regarding the income of the assessee.

In the present case also there is not even a remote suggestion of there being any falsehood of about there being any material details and particulars supplied by the assessee to the department. It is true that their claim was not accepted but that not in itself comes to the inevitable conclusion that the details supplied by the assessee were false, inaccurate or suffered from any concealment.

Learned Counsel for the assessee has also placed reliance on a decision of a Division Bench of the Court in the case of assessee itself for a previous year wherein also penalty proceedings had been initiated against the assessee and this Court held that the requirement of Section 271 (1) (c) of the Act for imposition of penalty would necessarily have to be supported by findings or a decision that there was a concealment of particulars of the income made by the assessee. In the absence of any finding with regard to the concealment or with regard to lack of bonafidies of the assessee in furnishing correct material particulars, no penalty

would be attracted under the provisions of Section 271 (1) (c) of the Act.

Having heard learned Counsel for both sides and having perused the material on record, we are firmly of the opinion that in the present case there was a complete absence of the recording of any finding that the assessee had indulged in any concealment of any material particulars or that the explanation offered by him was not bonafide or false. The penalty, therefore, which was imposed on items no.3, 4, 5, 12 & 13 was not justified and it is hereby set aside.

The substantial questions of law are, therefore, answered in favour of the assessee and against the department.

The appeal is disposed of as above. No costs.

Order Date :- 19.12.2016
pks

(Vinod Kumar Misra, J.) (Bharati Sapru, J.)