Court No. - 35
Case :- INCOME TAX APPEAL No. - 17 of 2016
Appellant :- Pr. Commissioner Of Income Tax-1 Kanpur
Respondent :- M/S Allah Dad Tannery
Counsel for Appellant :- Ashok Kumar,Manu Ghildyal
Counsel for Respondent :- Nishant Misra
Hon'ble Bharati Sapru,J.
Hon'ble Vivek Kumar Birla,J.

We have heard Sri Manu Ghildyal learned counsel for the department and Sri S.D. Singh learned senior advocate assisted by Sri Nishant Misra learned counsel for the assessee.

This is income tax appeal filed by the revenue under section 260A of the Income Tax Act, 1961 against an order passed by the tribunal dated 27.8.2015 for the assessment year 2003-04. The only question of law which is sought to be answered is question no.'C' which reads as under:

"Whether the ITAT was justified in law and on facts that mere surrender of a claim does not give any amnesty to the assessee against the penalty and had there been no scrutiny in this case, there would have been no question of any surrender by the assessee?"

Briefly stated facts of the case are that the assessee is a partnership firm and is engaged in the business of manufacturing and export of finished leather etc. The assessee filed its return of income on 01.12.2013, declaring the total taxable income of Rs.2,05,02,305/- for the period 01.04.2002 to 31.03.2003.

The assessment was completed under section 143(3) of the Act on 20.3.2006. The penalty proceedings under section 271 (1)(C) of the Act was also initiated against the assessee.

Aggrieved the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) which is dismissed. Thereafter assessing officer imposed penalty of Rs.1,25,00,000/- against the assessee under section 271 (1)(C) of the Act.

Against the penalty order dated 30.3.2012, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) who vide order dated 31.1.2014 deleted the penalty imposed by the Assessing Officer by observing that there was no failure on the part of the assessee either to conceal the particulars of its income or furnish in accurate particulars of income.

Aggrieved, the revenue preferred the appeal before the Income Tax Appellate Tribunal, which is dismissed by the order dated 27.8.2015 by which it held that the issue of deduction u/s80IB and section 80HHC of the Act on export incentive was a debatable issue and the controversy was set at rest by the Hon'ble Supreme Court in the case of **Liberty India versus Commissioner of Income Tax, reported in 317 ITR 218** therefore the penalty should not be levied under section 271(1)(C) of the Act.

Learned counsel for the department has sought to argue that regardless of the fact that the assessee had made surrender of a sum of Rs.2 crores, it would not come in unity to the assessee against the penalty proceedings and the deletion of the penalty by the tribunal under section 271 (1)(C) was therefore bad.

Per contra, learned counsel for the assessee has drawn attention to this court to the order passed by the Commissioner of Income Tax (Appeals) wherein it clearly records as under:

"Admittedly during the course of assessment proceedings, the AO could not lay his hands upon any new source of income other than that declared by the assessee, not there is any additional income discovered by the AO, which has been added to the income declared by the assessee. At the same time there is nothing in record to suggest that the assessee did not disclose its entire income or furnished inaccurate particulars of its income. Whatever agreed addition has come to be made, is only out of the incentives received by the assessee in respect of exports, which receipt of incentives is not in doubt. It is a case where the deduction u/s.80IB has been claimed for which there was at all material available with the assessee which was duly disclosed, in the shape of income & expenditure account and in the audit reports filed in support of the said claim. It is out and out, a case of legal deduction and the claim of the assessee has been denied on account of difference of opinion.

Be it may, the bonafide of the assessee also cannot be doubted for the reason, that the deduction claimed u/s.80IB and 80HHC were duly supported by audit reports to which the assessee was legally entitled. None of the facts and figures in respect of the deductions have been found to be fasse or untrue. The explanation given by the assessee throughout during the course of assessment proceedings that the assessee is eligible for the said deduction in view view of the provisions of the said section and also in view of the several decisions. It is also an admitted fact that both decisions of Ritesh Industries Ltd. and Taxation Laws Amendment Act, 2005 came subsequently to the filing of the return by the assessee. A subsequent event cannot form the basis of treating the return filed earlier or false or incorrect. The decision of the Apex Court in the case of Reliance Petro Products Ltd. 322 ITR 158 has held as under:

S.271(1)(C) penalty cannot be imposed even for asking unsustainable claims."

It is this order of the Commissioner of Income Tax (Appeals) which has been affirmed by the tribunal.

Learned counsel for the assessee has also drawn attention to the court the decision of the Apex Court in the case of **CIT versus Reliance Petro Products Pvt. Ltd. reported in (2010) 11 SCC 762** wherein the Apex Court has held in para 18 of the reports which reads as under:

"18. We must hasten to add here that in this case, there is no finding that any details, supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271 (1)(C) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to inaccurate particulars."

Having examined the record and having heard learned counsel for the both sides, the position is clear to the court that there is no allegation on record which suggests that the assessee had made any incorrect, erroneous or false details in his returns, which would result in invitation of the penalty under section 271(1)(C) of the Act.

The court below have recorded that no inaccurate particulars were furnished by the assessee and the penalty has been deleted on account of the fact that the provision of section 271((1)(C) of the Act were not attracted in the case.

In view of the above, the question of law as sought to be answered by the department clearly does not arise at all and therefore is not admitted.

There is no merit in the appeal, which is dismissed. The question referred to above, is thus answered in favour of the assessee and against the department.

Order Date :- 9.11.2016
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