IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.222 of 2015
Date of decision:January 11, 2016

The Pr. Commissioner of Income Tax 3, Ludhiana

..... Appellant

M/s S.S.Food Industries

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Rajesh Katoch, Advocate for the appellant.

Mr. B.M.Monga, Advocate and Mr. Rohit Kaura, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 23.12.2014, Annexure-4 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, 'B', Chandigarh (in short, "the

Tribunal") in ITA No.925/CHD/2013 for the assessment year 2009-10, claiming following substantial questions of law:-

i) Whether on the facts and in the circumstances of the case, the ITAT is right in law in cancelling the penalty under section 271(1)(c) even though the assessee has claimed deduction under section 80IC by not following the decision dated 17.8.2006 of Hon'ble Jurisdictional High court in the case of Liberty India 293 ITR 520 (P&H) and the assessee accepts that the decision of Liberty India dated 17.8.2006 is applicable in his case?

ii) Whether on the facts and in the circumstances of the case, ITAT is right in law in giving a finding that the assessee can claim deduction till the decision of Hon'ble Supreme Court even though there is a decision of jurisdictional High Court in favour of the revenue?

iii) Whether on the facts and in the circumstances of the case, the ITAT has not appreciated the Full Bench decision of Hon'ble Punjab and Haryana High Court in the case of Smt. Aruna Luthra 252 ITR 76 wherein it was held that non following of jurisdictional High Court decision amounts to mistake apparent from record?

iv) Whether on the facts and in the circumstances of the case, the ITAT is right in law in not appreciating the decision of jurisdictional High Court in the case of CIT vs. Ram Lal Baba Lal, 234 ITR 776 (P&H) and also the case of CIT vs. Guru Lal Bal Chand 111 ITR 134 (P&H) wherein it was held that the authorities by reference to the opinion of another High Court cannot say that the point is debatable?

v) Whether on the facts and in the circumstances of the case, the ITAT is right in law in not considering detailed

findings given by CIT(A) in his order dated 1.8.2013 in paras 3.14 to 3.26?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent assessee is a firm which is engaged in the business of manufacturing of biscuits/cookies and other bakery products. It filed its return of income on 30.9.2009 at total income of ₹ nil for the assessment year 2009-10. The case was selected for scrutiny and notices under various sections of the Act were issued to the assessee. The Assessing Officer completed assessment proceedings under Section 143(3) of the Act vide order dated 29.11.2011, Annexure 1 and disallowed deduction under Section 80IC of the Act amounting to ₹ 1,50,09,481/-. Penalty proceedings under Section 271(1)(c) of the Act were also initiated for filing inaccurate particulars of income. Order imposing penalty of ₹ 51,01,720/- was passed on 29.5.2012, Annexure 2. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 1.8.2013, Annexure 3, the CIT (A) dismissed the appeal. Not satisfied with the order, the assessee filed appeal before the Tribunal. Vide order dated 23.12.2014, Annexure 4, the Tribunal allowed the appeal and set aside the order passed by the CIT(A) by deleting the penalty. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. Admittedly, the assessee had filed return of income

declaring nil income on 30.9.2009 after claiming deduction under Section 80IC of the Act amounting to ₹ 1,97,78,564/-. The judgment of the Apex Court in the case of ***M/s Liberty India vs. CIT,*** (2009) 317 ITR 218 was rendered on 31.8.2009 but was published for the first time only on 17.9.2009. It has been categorically recorded by the Tribunal that there was very little gap between the publication of the decision of the Apex Court in ***M/s Liberty India's*** case (supra) and the filing of the return by the assessee. At the time of making return, the issue was debatable and penalty could not have been levied. Further, the Tribunal noticed that the assessee had disclosed all the particulars of the income and had not concealed anything. Once proper disclosure had been made, penalty was not attracted in view of the judgment of the Apex Court in ***CIT vs. Reliance Petroproducts Pvt. Limited,*** (2010) 322 ITR 158. Further the return which was filed on the basis of the certificate issued by the Chartered Accountant though under mistake, the assessee could take the benefit on the basis of bonafide belief. The relevant findings recorded by the Tribunal read thus:-

> "12. We have considered the rival submissions carefully and find force in the submission of the learned counsel for the assessee. No doubt the Hon'ble Jurisdictional High Court had decided this issue against the assessee which is reported in 293 ITR 520 and decision of Hon'ble Punjab and Haryana in case of Liberty India vs. CIT on 17.8.2006. At the same time the decision of Hon'ble Delhi High Court in case of CIT vs. Eltek SGS (P) Limited, 300 ITR 6 was rendered on 19.2.2008 which was favourable to the assessee, therefore,

assessee had the right to make claim of deduction. It is not always necessary that everybody would become aware of the decision. Ultimately when the same issue was decided by the Hon'ble Supreme Court on 31.8.2009 which is said to be published for the first time on 17.9.2009 and therefore there was very little gap between publication of the decision and filing of the return. It is also possible that return may have been finalized before publication of the decision, therefore at the time of making return the issue was debatable and penalty could not have been levied.

13. In any case assessee disclosed all the particulars of the income and it cannot be stated that assessee has concealed any particulars and furnished incorrect particulars. Once proper disclosures have been made then penalty is not attracted in view of the decision of Hon'ble Supreme Court in case of CIT vs. Reliance Petroproducts Pvt. Limed 322 ITR 158. Further the return was filed on the basis of certificate issued by Chartered Accountant and even if it is a mistake on the part of Chartered Accountant, the assessee can always take the shelter that he was under bonafide belief on the basis of such advice that deduction was claimed on the basis of such bonafide belief. Therefore, in our opinion this is not a fit case for levy of penalty and accordingly we set aside the order of learned CIT(A) and delete the penalty."

5. In ***Reliance Petroproducts (P) Limited***'s case (supra), (2010) 189 Taxman 322 (SC), the Apex Court held that merely because the assessee had claimed expenditure which claim was not accepted or was not acceptable to the revenue, that by itself would not attract penalty under section 271(1)(c) of the Act. It was recorded thus:-

"7. As against this, Learned Counsel appearing on behalf of the respondent pointed out that the language of Section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under:-

"271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."

8. A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made.

It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would

> amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs.Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and reiterated in para 13 that:-
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> > "13. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist."

Further, this Court in ***Commissioner of Income Tax I, Ludhiana vs. Tudor Knitting Works (P) Limited,*** (2014) 43 Taxman.com 28 (P&H) following the judgment of the Apex Court in ***Reliance Petroproducts (P) Limited***'s case (supra), dismissed the appeal filed by the revenue against the deletion of penalty levied under Section 271(1)(c) of the Act. The judgment of Delhi High Court in ***CIT vs. Zoom Communication (P) Limited***, (2010) 233 CTR 465 relied upon by the learned counsel for the appellant-revenue being based on individual fact situation involved therein does not come to the rescue of the revenue.

6. In the present case, the view adopted by the Tribunal is a plausible view based on appreciation of material on record and, therefore, does not warrant any interference by this Court. Learned counsel for the

appellant-revenue has not been able to show any illegality or perversity in the impugned order. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

January 11, 2016 **(Raj Rahul Garg)**
'gs' **Judge**