

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2015

PRESENT

THE HON'BLE MR.JUSTICE MOHAN M. SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

I. T. A. NOs.398/2014 & 55/2015

BETWEEN :

1. The Commissioner of Income-Tax
C.R. Building
Queens Road
Bangalore
2. The Deputy Commissioner of Income-Tax
Circle-11(3)
Rashthrothana Bhavan
Nrupathunga Road
Bangalore

..Appellants

(By Sri K.V. Aravind, Adv.,)

AND :

M/s. Filtrex Technologies P. Ltd
No. 16/4, Raghavendra Nagar
Near Ring Road
4th Cross, HRBR Layout
Bangalore-560043

..Respondent

(By Sri Chythanya K.K., Adv.,)

These Income Tax Appeals are filed under Section 260-A of Income Tax Act, 1961, arising out of order dated 25.04.2014 passed in ITA No.1628/Bang/2012 and CO No.83/Bang/2013, for the assessment year 2006-2007 praying to formulate the substantial questions of law stated and allow the appeal and set aside the order passed by the Income Tax Appellate Tribunal, Bangalore.

These Income Tax Appeals coming on for admission, this day, **MOHAN M. SHANTANAGOUDAR, J.**, delivered the following:-

J U D G M E N T

These appeals are filed questioning the order dated 25.4.2014 passed by the Income Tax Appellate Tribunal, Bangalore in ITA.No.1628/Bang/2012, confirming the order of the Commissioner of Income Tax (Appeals), Bangalore.

2. The respondent-assessee is a company engaged in the manufacture of carbon blocks used in water

purifying filters at residential buildings. It filed its return of income for the assessment year 2006-07 declaring the income at Rs.40,22,030/-. However, the total income determined by the concerned Assessing Officer in the assessment order, dated 22.12.2008 was Rs.1,77,14,890/-, including the fees of Rs.79,98,870/- paid for technical services to M/s.Filtres Holding Pte. Ltd., Singapore. The enhancement of income by the Assessing Officer was due to three disallowances made under Section 40(a)(ia) of the Income Tax Act, 1961 ('Act' for short). Out of three disallowances made by the Assessing Officer, two disallowances were deleted by the Commissioner of Income Tax (Appeals), Bangalore by the order dated 28.4.2008. However, disallowance of Rs.79,98,870/- was sustained by the erstwhile Commissioner. The Assessing Officer treated the sum of Rs.79,98,870/- both as concealment of income and furnishing of inaccurate particulars of income by the respondent-assessee and therefore initiated proceedings

for levy of penalty under Section 271(1)(c) of the Act. After hearing, the Assessing Officer imposed penalty of Rs.26,92,419/- being the penalty attributable to the concealment of income of Rs.79,98,870/-. The Commissioner of Income Tax (Appeals) allowed the appeal filed by the respondent-assessee concluding that the respondent has neither concealed the income nor furnished inaccurate particulars of income. The said order of the Commissioner of Income Tax (Appeals) is confirmed by the Income Tax Appellate Tribunal, Bangalore. The order passed by the Income Tax Appellate Tribunal, Bangalore, is called in question in these appeals by the revenue contending that it involved substantial question of law and same has to be adjudicated.

3. By the impugned orders, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, Bangalore, have concluded that the assessee-

respondent herein has not indulged in furnishing of inaccurate particulars of income; the assessee-respondent herein has made payments to three different foreign parties out of which two payments were held not liable for deduction of tax; it is only the payment in respect of M/s.Filtrex Holdings Pte. Ltd., Singapore was held to be liable for deduction of tax; the respondent herein remitted the payments based on the certificate given by the Chartered Accountant; and no violations were reported in Form No.3CD. On facts, both the authorities have concluded that failure to deduct tax by the respondent herein was a *bona fide* mistake and hence, this is not a case to levy penalty. It is also held by both the authorities that assessee has neither concealed the income nor furnished inaccurate particulars of income.

4. The question as to whether disallowance made by the Assessing Officer of Rs.79,98,870/- would amount

to concealment of income under Section 271(1)(c) of the Act? The very question was decided in the impugned orders passed by the Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal in favour of the assessee.

5. We do not find any ground to interfere with the impugned orders inasmuch as the Commissioner of Income Tax (Appeals) and the appellate Tribunal, on facts, have rightly concluded that the genuineness of the payment was never in doubt; the explanation of the assessee is acceptable and that the assessee has neither concealed the income nor furnished inaccurate particulars of income. In the matter on hand, the genuineness of the payment was never in doubt and the dispute as to whether the payment was made to foreign party was liable for tax in India or not.

In the matter on hand, we find that there is no material available on record to arrive at a conclusion that

conditions laid down in Section 271(1)(c) of the Act are satisfied for levying penalty. It is well settled principle that penalty proceedings are quite different from the assessment proceedings. It is by now well settled that levy of penalty is not automatic if the addition/disallowance is sustained by the appellate authorities. The ingredients of the provisions of Section 271(1)(c) are to be satisfied for levying the penalty. It is no doubt true that the payment made by the respondent-assessee to M/s.Filtrex Holdings Pte. Ltd., Singapore, was liable for deduction of tax at source. It is also not in dispute that such amount of tax was not deducted at source in respect of the payment made to M/s.Filtrex Holdings Pte. Ltd., Singapore. It appears that there was genuine confusion on the question as to whether the payment made to a foreign party was liable for levying tax in India or not. It is also not in dispute that disallowance as made by the Assessing Officer was upheld by the appellate authorities. However, the

respondent-assessee has filed detailed statement, explaining as to why it is not liable to be imposed with penalty. After hearing the assessee and after considering the material on record, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have concurrently concluded that it is difficult to say that the respondent has either concealed the income or furnished inaccurate particulars of the income.

As has been held by the Apex Court in the case of ***Dilip N.Shroff vs. Joint Commissioner of Income Tax & another (291 ITR 590)*** where the assessee had relied on the opinion of an expert and subsequently the opinion of the expert is not accepted or another expert had given a different opinion, it could not be held that the assessee had furnished inaccurate particulars within the meaning of the provisions of Section 271(1)(c) of the Income Tax Act ('Act' for short).

In the matter on hand, as aforementioned, the Chartered Accountant has given a certificate to the effect that the assessee is not required to deduct tax at source while making the payment to M/s.Filtrex Holding Pte. Ltd., Singapore. Thus, the assessee acted on the basis of the certificate issued by the expert and hence the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have rightly concluded that this is not a fit case to conclude that the assessee has deliberately concealed the income or furnished inaccurate particulars of the income. The assessee has filed Form 3CD along with the return of income in which the Chartered Accountant has not reported any violation by the assessee under Chapter XVII B which would attract disallowance under Section 40(a)(ia) of the Act.

On reconsidering the entire material on record, we do not find any ground to interfere with the impugned

order passed by the Income Tax Appellate Tribunal. No substantial question is involved in these appeals.

Hence, appeals fail and accordingly the same stand ***dismissed.***

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*ck/-