

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Income Tax Appeal No. 13 of 2018

Principal Commissioner of Income Tax, Dehradun
.....Appellant.

Versus

M/s Mahima Udyog
..... Respondent.

Present:
Mr. Hari Mohan Bhatia, Advocate for the appellant.

JUDGMENT

Coram: Hon'ble K.M. Joseph, C.J.
Hon'ble Sharad Kumar Sharma, J.

Dated: 9th May, 2018

K.M. JOSEPH, C.J. (Oral)

This is an appeal under Section 260-A of Income Tax Act, 1961 (hereinafter referred to as the 'Act') by the Revenue impugning the order passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi. By the impugned order, the Tribunal has dismissed the Appeal filed by the appellant against the order of CIT (Appeal), Dehradun.

2. This is a case where the assessee filed return on 26.07.2009, declaring total income of Rs.1,52,72,495/- after claiming benefit of deduction under Section 80IC of the Act at Rs.18,54,42,574/-. The case came to be selected for scrutiny and notice was issued under Section 143 (2) on 10.08.2013. After issuance of the notice under Section 143 (2) of the Act, the assessee filed revised return declaring nil

income by claiming deduction under Section 80IC of the Act to the extent of Rs.20,07,15,069/-, which includes business income as well as interest accrued on FDRs of Rs.1,52,72,495/-. The assessee, it appears, produced certificate in Form 10CCB for claiming deduction under Section 80IC of the Act. The Auditor has certified that deduction under Section 80IC of the Act is eligible upto Rs.20,07,15,070/-. It seems, the Assessing Officer did not accept the revised return and made addition of Rs.1,52,72,495/-. This is on the basis that the said interest income was not generated by the business allowing to claim deduction under Section 80IC of the Act. The assessee did not challenge it. It is, thereafter, that the proceedings were initiated for imposing penalty under Section 271(1)(c) of the Act by the Assessing Officer. It is this which is interfered with by the Commissioner (Appeals) and order of the Appellate Authority was approved by the Tribunal.

3. Heard Shri Hari Mohan Bhatia, learned Counsel for the appellant / Revenue.

4. This is a case where the Tribunal has come to the conclusion that provision of Section 271 (1) (c) of the Act is not attracted. This is a case where the assessee had obtained the CA certificate in the prescribed Form, in which, the total income claimed as deduction was certified to be eligible for deduction under Section 80IC of the Act.

5. The Tribunal, in fact, noticed that it is not even clear from the notice issued as to whether it is a case of concealment of income or furnishing inadequate particulars.

The Tribunal relied on the judgment of the Karnataka High Court. This is a case, which the Tribunal found involved making of a claim which is not sustainable in law and which will not amount to furnishing of inadequate particulars.

6. In fact, the learned Counsel for the Revenue also points out Explanation 1 to Section 271 (1) of the Act, which reads as under :-

“Explanation 1. - Where in respect of any facts material to the computation of the total income of any person under this Act, -

(A) such person falls to offer an explanation or offers an explanation which is found by the [Assessing Officer] or the [Commissioner (Appeals)] [or the [Principal Commissioner or Commissioner]] to be false, or

(B) such person offers an explanation which he is [not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him],

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”

7. The word as stands out is the word ‘false’. ‘False’ is not the same as ‘incorrect’. In this regard, we may profitably refer to the judgment of the Hon’ble Apex Court in the case of **Commissioner of Income Tax Vs. Reliance Petroproducts Prvt. Ltd.** reported in [2010] 322 ITR 158 (SC). Therein, the Apex Court, inter alia, held as follows:

“A glance at the provisions of section 271 (1) (c) of the Income-tax Act, 1961, suggests that in order to be covered by it, 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. The meaning of the word "particulars" used in section 271 (1) (c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271 (1) (c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."

8. Therefore, mere making of claim which is found to be not sustainable in law will not amount to furnishing inadequate particulars. No doubt, the question of bona fide may arise having regard to Clause (B) of the Explanation. In other words, if the claim is made, it is for the assessee to make good his claim atleast by pointing out that it is made bona fide.

9. In this case, the assessee has proceeded to make claim on the basis of the Chartered Accountant certificate,

according to which, the claim was justified. It may be true that the Assessing Officer has rejected the revised return, wherein, part of the claim sought to be laid at the doorstep of Section 80IC was rejected and the order of the Assessing Officer has also become final; but that also may not suffice to impose penalty under Section 271(1)(c) of the Act, as what the law contemplates is making of a false claim or a claim which is not bona fide. No question of law has been raised regarding the finding about the bona fide of the assessee's claim being proved by the Auditor Certificate and the discussion of the matter by the Commissioner (Appeals) which found favour with the Tribunal. Therefore, we need not answer the question of law which is raised.

10. Therefore, in these circumstances, we do not deem it necessary to answer the question which has been raised on the ground that even without going into the question which has been raised, the order of the Tribunal is only to be upheld. We do so and the appeal will stand dismissed.

(Sharad Kumar Sharma, J.)

09.05.2018

(K.M. Joseph, C. J.)

09.05.2018