

Court No. - 32

Case :- INCOME TAX APPEAL No. - 507 of 2012

Petitioner :- Commissioner Of Income Tax -II

Respondent :- M/S Arvind Footwear Pvt. Ltd.

Petitioner Counsel :- Shambhu Chopra, S.C.

Hon'ble Ashok Bhushan,J.

Hon'ble Prakash Krishna,J.

Heard Shri Shambhu Chopra, learned standing counsel for the appellant.

This appeal under section 260-A of the Income Tax Act 1961 has been filed against the order of the Income Tax Appellate Tribunal dated 17.11.2011 in ITA No. 263/LKW/2011.

The assessee in his return with regard to assessment year 2006-2007 has claimed deduction under section 80 IB of the Act on the amounts of incentives by way of duty draw back for treating them as profits derived from industrial undertaking. The Assessing Officer completed the assessment order vide his order dated 26.8.2008 and did not allow the deduction under section 80 IB of the Act.

A penalty order was issued on 2.12.2010 under section 271(1)(c). The judgment of the Apex Court in *Liberty India versus Commissioner of Income Tax 225 CTR 233(2009)* has been relied and referred to while passing the penalty order where the Apex Court has laid down that duty draw back/DEPB are incentives which flow from the schemes framed by the Central Government, hence the incentives/profits are not profits derived from the eligible business and therefore duty draw back received/DEPB benefits do not form part of net profit of the industrial undertaking for the purposes of Sections 80 IA & IB.

The appeal was filed by the assessee against the order which was partly allowed by the order dated 4.3.2010. Against the order of penalty, appeal was filed being Appeal No. CIT(A)II/285/DCIT-6/10-11 which was allowed by the judgment and order dated 2.2.2011. Against the appellate order, the Department filed the appeal which has been dismissed by the Tribunal.

The learned counsel for the Department in support of his appeal contended that claim for deduction under section 80 IB was incorrect. He submits that Supreme Court has only clarified the law in *Liberty India versus Commissioner of Income Tax (Supra)* and the law was always as has been clarified by the Apex Court and this was a fit case where penalty was rightly imposed. He submits that the Tribunal relied on the judgment of the *Liberty India versus Commissioner of Income Tax (Supra)* and the order of the Tribunal deserves to be set aside.

We have considered the submissions of Shri Shambhu Chopra, learned standing counsel for the appellant and perused the record.

The Tribunal while dismissing the appeal of the Department has made following observations in paragraph 6:

*"6. Heard parties with reference to material on record and case law brought to our notice. The appellant has made a claim of deduction u/s 80 IB of the Act on the basis of two different opinions available at the relevant time with regard to allowability of deduction under section 80 IB of the Act on the amounts of incentives by way of duty draw back for treating them as profits derived from the industrial undertaking. The Apex Court, subsequent to the date of filing the return of income by the assessee in the case of **Liberty India versus CIT (2009) 28 DTR (SC) 173; 317 ITR 218 (SC) 173; 317 ITR 218 (SC)** clarified the law that receipts from DEPB/DDB are not profits derived from industrial undertaking but are independent source of income. Such a claim of deduction made on the amount of these incentives was not sustainable in law at the time when the return was filed by the assessee. The Apex in the case of **CIT vs. Reliance Petroleum Products (P) Ltd. (2010) 322 ITR 158 (SC)** has laid down that a mere making of a claim which is not sustainable in law, but itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. In that view of the matter, the finding reached by the learned CIT(A) cannot be said to be perverse. Cancellation of penalty by him is found justified requiring no indulgence of this Tribunal. We, therefore, reject the grounds raised in appeal. "*

The Tribunal has relied on the judgment of the Apex Court in **Commissioner of Income Tax versus Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)** wherein the Apex Court while considering the provisions of 271(1)(c) of the Act pertaining to penalty has laid down the following:

"We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. 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 the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars."

It has been noted in the order of the Tribunal that there was a difference of opinion at the time when return was filed by the assessee. The mere fact that claim of deduction under section 80 IB of the Act could not have been made a

basis for imposing penalty, is not correct. It is not denied that the Apex Court clarified the law in *Liberty India versus Commissioner of Income Tax (Supra)* subsequent to filing of the return. The Apex Court in *Commissioner of Income Tax versus Reliance Petro Products Pvt. Ltd. (Supra)* has laid down that 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 the inaccurate particulars. The present is a case which is fully covered by the judgment of the Apex Court in *Commissioner of Income Tax versus Reliance Petro Products Pvt. Ltd. (Supra)*.

We do not find any error in the order of the Tribunal dismissing the appeal of the Department. No substantial question of law is involved in the appeal for consideration. The appeal is dismissed.

(Prakash Krishna,J)

(Ashok Bhushan,J)

Order Date :- 11.4.2012

IB