HIGH COURT OF JUDICATURE AT BOMBAY

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 898 OF 2015

Commissioner of Income Tax - LTU ...**Appellant**

Versus

M/s. Man Industries Ltd. ...**Respondent**

Mr. Tejveer Singh, for the Appellant.

Mr. Bharat Damodar, i/by Kanga & Co., for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 7 February 2018

ORDER :

1. This Appeal under Section 260A of the Income Tax Act, 1961 ("***The Act***" for short), challenges the order dated 22 December 2014 passed by the Income Tax Appellate Tribunal ("***The Tribunal***" for short). The impugned order dated 22

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December 2014 is in respect of Assessment Year 2004-05.

2. The Revenue urges the following question of law for our consideration:-

> Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty ignoring the provisions of Section 271(1)(c) of the Act?

3. For the assessment year 2004-05, a notice under Section 148 was issued to the Respondent seeking reopening the assessment, completed under Section 143(3) of the Act.

4. The Respondent-Assessee had filed its return of income for the subject assessment year which was assessed to Rs. 54.52 Crores on 19 December 2008 as a consequence of giving effect to the order of the Commissioner of Income Tax (Appeal) (CIT(A)). Thereafter, the assessment was reopened under Section 148 of the Act, on the ground that the deduction

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claimed under Section 35(1) of the Act to the extent of Rs. 1.00 Crore given to M/s. Indian Medical Scientific Research Foundation, Agra was found by the Central Bureau of Investigation (C.B.I.) to be bogus. The return of income filed consequent to the notice, did not claim the benefit of deduction of Rs. 1.00 Crore under Section 35(1) of the Act and assessment was made under Section 143(3) read with Section 147 of the Act.

5. Thereafter, proceedings for penalty under Section 271(1)(c) of the Act were commenced. The Respondent pointed out that during the regular assessment proceedings, during the course of assessment proceedings, the Respondent-Assessee had itself informed the Assessing Officer about the investigation being conducted by the C.B.I. in respect of one M/s. Indian Medical Scientific Research Foundation, Agra to whom the Respondent No. 1 given a donation of Rs. 1.00 Crore and offered to withdraw its claim and deduction under Section 35(1) of the Act, if the same is not allowable in law. However,

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the assessment proceedings were completed on 22 December 2006 under Section 143(3) of the Act without disturbing the claim for donation of Rs. 1.00 Crore. It was only thereafter, on 12 October 2007, the Assessing Officer sought to reopen the assessment for assessment year 2004-05. The reason recorded for reopening of the assessment was the claim for donation under Section 35(1) of the Act of Rs. 1.00 Crore to M/s. Indian Medical Scientific Research Foundation, Agra was found to be bogus institution consequent to the enquiries conducted by the C.B.I. The Respondent filed its return of income on 12 February 2008 consequent to the reopening notice and in that return, the Respondent did not claim deduction of Rs. 1.00 Crore donation to M/s. Indian Medical Scientific Research Foundation, Agra, which is now found to be bogus. The assessment proceedings were thereafter, completed under Section 143(3) read with Section 147 of the Act was completed on 22 December 2008. In the above circumstances, it was submitted that no penalty is imposable under Section 271(1)(c) of the Act. However, the Assessing Officer was not satisfied and by an order dated 24

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June 2009 imposed a penalty of Rs. 89.68 Lakhs under Section 271(1)(c) of the Act i.e. 200 percent of the tax sought to be evaded.

6. On appeal of CIT(A) by an order dated 24 March 2011 set aside the penalty. This *inter alia* after holding that at the time that the Respondent made the original claim for donation under Section 35(1) of the Act it was misled into believing that M/s. Indian Medical Scientific Research Foundation, Agra was a genuine institution. In fact all proceeded on the above basis and it was only now, on conclusion of enquiry by the C.B.I. that it was found to be a bogus institution.

7. The Tribunal by the impugned order dated 22 December 2014 dismissed the Appeal of the Revenue by recording the fact that M/s. Indian Medical Scientific Research Foundation, Agra was in fact, approved by the Central Government for the purpose of deduction under Section 35(1) of the Act with effect from 1 April 2000. It further records that it was an undisputed position that on the basis of the approval by

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the Central Government that the Respondent made a donation of Rs. 1.00 Crore to M/s. Indian Medical Scientific Research Foundation, Agra. Thus, on the above facts complied with it upholding the finding of CIT(A) to the effect that the Respondent-Assessee withdrew its claim on realizing that the M/s. Indian Medical Scientific Research Foundation, Agra is a bogus institution as found by the C.B.I. dismissed the Revenue's Appeal.

8. We find that it is undisputed that when filing of return of income on 12 February 2008, consequent to reopening notice, the Respondent had not made a claim deduction of Rs. 1.00 Crore for donation, inspite of donation made to M/s. Indian Medical Scientific Research Foundation, Agra. The said Research Foundation was not known to be a bogus institution both at the time the donation and claim was made in the return of income filed in regular assessment proceedings under Section 143(3) of the Act. The foundation carried out its activities under a notification issued by the Central Government which entitled donations made to it,

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the benefit of Section 35(1) of the Act. We further find that during the course of regular proceedings itself the Respondent-Assessee brought it to the notice of Assessing Officer that there is a C.B.I. enquiry proceedings against the M/s. Indian Medical Scientific Research Foundation, Agra and offered to withdraw the claim for donation. Thus, there was a complete disclosure on the part of the Respondent-Assessee. In fact, on appreciation of facts, both the CIT(A) and the Tribunal have held that the Respondent was misled into believing that M/s. Indian Medical Scientific Research Foundation, Agra was a genuine institution.

9. On the facts, the view taken by both the CIT(A) and the Tribunal is a possible view and therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

10. Accordingly, the Appeal is dismissed, with no order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**

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