

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 414/2011

% Date of Decision : 23rd January, 2012.

CIT Appellant
Through Ms. Rashmi Chopra, sr. standing
counsel

versus

TEDCO GRANITE LTD Respondent
Through Mr. Rakesh Gupta and Ms. Rani
Kiyala, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

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

SANJIV KHANNA,J: (ORAL)

The Revenue is aggrieved against the order dated 22nd January, 2010 passed by the Income Tax Appellate Tribunal (tribunal, for short) deleting penalty under Section 271(1)(c) of the Income Tax Act, 1961

(Act, for short).

2. For the assessment year 2001-02, the assessee had returned loss of Rs.(-)5,72,51,810/-. Assessment order was passed making several additions and the taxable income was assessed at Rs.2,59,52,863/-. The Assessing Officer had disallowed bad debts on three heads namely, (i) subsidy not received from the Government of Rs.7,18,730/-, (ii) special drought discount of Rs.79,03,809/- and (iii) dealers discount of Rs.51,04,000/-.

3. The CIT(Appeals) in quantum proceedings granted substantial relief to the assessee and deleted most of additions made by the Assessing Officer except the three additions mentioned above. As a result of the order passed by the CIT(Appeals) in the quantum proceedings, the taxable income of the assessee for the assessment year 2001-02 was assessed at a negative figure of Rs.4,35,20,671/-. The assessee was a sick company under the provision of Sick Industrial Companies (Special Provisions) Act, 1985. The respondent-assessee thereafter did not prefer any appeal.

4. The respondent-assessee had filed an application under Section 46A before the CIT(Appeals) for production of additional evidence in the

quantum proceedings and the Assessing Officer had furnished remand report dated 23.06.2004. The additional evidence submitted by the assessee was taken on record and considered by the CIT(Appeals). After referring to the additional evidence, several additions as noticed as noticed above were deleted.

5. With regard to the three heads mentioned above, the CIT(A) in the quantum proceedings did not delete the additions on account of dealer discount and special drought discount holding inter alia that confirmations cannot be taken into consideration as the assessee was having regular dealings with the dealers/distributors. In addition, the CIT(A) in the quantum proceedings recorded that the special drought discount was only written off in the books of account and was a good debt. With regard to subsidy, the CIT(A) in the quantum proceedings sustained the addition made by the Assessing Officer on the basis that the relevant papers/documents issued by the Union of India were not on record and the respondent assessee had failed to show that subsidy had been taken into account prior to 31st March 2001.

6. The Assessing Officer thereafter issued notice to the assessee in the

penalty proceedings. The respondent-assessee in response to the said notice filed a detailed reply. Along with the reply the respondent-assessee placed on record details of 28 parties who were given special drought discount and dealer discount. The assessee had filed before us the paper book, which was filed before ITAT. The list of said 28 parties is enclosed in the said paper book. Along with the details, confirmations from the debtors, who were given dealer discount and special drought discount, were furnished. It was stated that no payments towards the said discounts were received.

7. On the question of subsidy the respondent-assessee had placed and submitted to the Assessing Officer the relevant papers writing off the subsidy. The assessee had submitted before the Assessing Officer that the subsidy was to be received from the Government of India but was not granted. It was pointed out that 85% of the subsidy was paid straightway and balance of 15% was retained by the Government and was subject to verification at the State level. The case put forth by the respondent was that the Government of India had refused to pay subsidy Rs.7,18,813/-, which was already recorded in the books of accounts as part of sales up to

31.3.2001. The case put up by the respondent-assessee is that all papers, including letters of the Government and proof that this amount was recorded in the books prior to 31st March 2001, were filed before the Assessing Officer in the penalty proceedings.

8. It is clear from the penalty order under Section 271(1)(c) that the Assessing Officer did not examine the said aspects and documents. In the penalty order it is recorded as under :-

“The AO provided proper opportunity to the assessee to explain the reasons for such high expenses claimed during the year. Inspire (sic) of opportunities provided the assessee did not comply to the notices issued. In view of these facts the AO found that the abouve (sic) expense in respect bad debts, special drought discount and discount to distributors and dealers on off season sales could not be verified. It was also noticed by the AO that during the earlier year the assessee had not claimed any special drought discount. Since the assessee did not comply with the requirements of notices issued, the assessment was framed u/s 144/143(3) on the basis of material available on record and accordingly disallowed the above expenses for want of verification. In appeal the learned CIT(A) also confirmed the above disallowances.”

9. This is not an appropriate way of dealing with the assessee's submission in the penalty proceedings when evidence and material was placed before the Assessing Officer. The Assessee is entitled to produce

new and relevant material/documents in the penalty proceedings. We may also record that the CIT(Appeals) in quantum proceedings had adversely commented upon the assessment order passed under Section 144 of the Act and had stated that the respondent-assessee was prevented by sufficient cause from producing the details before the Assessing Officer.

10. The CIT(Appeals) confirmed the penalty by stating that the respondent-assessee had not placed material on record to show that the return of income was correct and again recorded as under :

“In the light of the above findings, it is proved beyond doubt that appellant has furnished inaccurate particulars of income and thereby concealed taxable income. The appellant has placed no material to show that failure to return the correct income did not arise from (sic) any fraud or gross or willful neglect on his part, nor is burden discharged by material on record. On the contrary, the material on record in the penalty proceedings can lead to no other inference but to one that the appellant had deliberately failed to return its correct income. For all the reasons stated above, I am of the view that the AO was justified in holding the appellant guilty of the contravening of the provisions of section 271(1)(c). In view of the above discursions (sic), I confirm penalty of Rs.54,30,665/- as levied u/s 271(1)© (sic) of the Act by the AO.”

11. In these circumstances, the tribunal went into the details, examined

the records and the confirmations which were furnished by the assessee. The paper book filed before the tribunal is of 71 pages. The tribunal after examining the said papers has come to the conclusion that the levy of penalty under Section 271(1)(c) was not justified. In the present case the respondent assessee had produced fresh material/evidence. The Assessing Officer and the CIT(A) failed to consider/examine the veracity and correctness of the said papers. There is no reason why this was not done. This lapse has resulted in the order by the tribunal. They have examined the said material/evidence and have accepted the factual assertions on basis of evidence/material which was filed before the Assessing Officer by the respondent assessee but has not been commented upon and dealt with. The appellant/Revenue is unable to show what and where the tribunal has made a factual error or mistake. In view of the facts stated above, no substantial question of law arises for consideration and the appeal is dismissed. No costs.

SANJIV KHANNA,J

R.V.EASWAR, J

JANUARY 23, 2012

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