IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL No.48 OF 2015
The Commissioner of Income Tax-Central, Nagpur.
-Vrs.-
M/s Ankit Constructions, Nagpur.

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. Anand Parchure, counsel for appellant.
Mr. N.S. Bhattad, counsel for respondent.

CORAM : B.P. DHARMADHIKARI AND P.N. DESHMUKH, JJ.

DATED : 13th OCTOBER, 2015

In a return which was subjected to compulsory scrutiny respondent assessee claimed deduction under section 80-IA(4) of Income Tax Act. Assessing Officer during scrutiny issued notice u/s 142(1) and that claim was withdrawn. Assessee changed Chartered Accountant and claimed that deduction was sought as per advice of earlier Chartered Accountant who completed a tax audit and also filed Return. Assessing Officer ordered initiation of proceedings under section 271(1)(c). Thereafter, an order of penalty also came to be passed on 27.6.2011. This was questioned before CIT (Appeals) by assessee which dismissed the appeal. Assessee then approached TIAT in further appeal and ITAT has on 11.9.2014 set aside the order of Assessing Officer as also CIT (Appeals) and upheld the penalty.

Advocate Parchure invites attention to facts to urge that claim has been withdrawn only after notice under Section 142(1) and the earlier Chartered Account has answered the communication sent to him by department stating that he never advised such a claim or deduction. Advocate Parchdure is relying upon judgment reported at **(2013) 38 Taxmann.com. 448(SC)** (MAK Data (P) Ltd. Vs. Commissioner of Income Tax-II) to urge that assessee has not acted bonafide and was aware that facts did not enable it to claim deduction.

Advocate Bhattad on the other hand submits that earlier Chartered Accountant who advised deduction had independently conducted tax audit and filed a Return. That Chartered Account has by a last communication dated 17.6.2011 accepted that he advised deduction. In this situation, when assessee involved in business of construction of bridges and roads has acted as per expert advice and has withdrawn the claim immediately after realizing error, the view taken by ITAT does not call for interference and no substantial question of law arises. He also tries to distinguish the judgment of Hon'ble Apex Court mentioned supra.

Perusal of judgment of Hon'ble Apex Court, particularly paragraph 9 on which Advocacy Parchure has placed reliance shows a finding that surrender of income by assessee there was found not voluntary. There during Assessment proceedings, Assessing Officer had noticed certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed which were impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003 in case of sister concern of the assessee. It was found that survey was conducted more than 10 months before assessee filed its Return of Income. In this background, it has been observed that had it been the intention of the assessee to make full disclosure of its income, it could have filed the Return declaring an income inclusive of the amount which was surrendered later during the course of assessment proceedings. Thus, facts on record before Hon'ble Supreme Court clearly show that assessee there had time of 10 months after search operation was conducted and still chose not to declare the income which he surrendered during assessment proceedings.

Facts at hand show that Return was subjected to compulsory scrutiny and during that scrutiny notice under Section 142 was issued and immediately the claim was withdrawn.

We, therefore, find that ITAT has considered entire material as relied upon and last communication by Chartered Account and allowed the appeal. No substantial question of law, therefore, arises. Appeal is rejected. No costs.

JUDGE **JUDGE**

Hirekhan