IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.9.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

T.C.A.No.767 of 2015

The Commissioner of Income Tax,
Chennai ... Appellant/Respondent

Vs

M/s.Ambattur Clothing Limited,
Chennai-58. ... Respondent/Appellant

TAX CASE APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 24.3.2015 made in I.T.A.No.1642/(Mds)/2014 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2007-08.

Against the Order passed by the Commissioner of Income Tax (Appeals)-1, Chennai - 34 dated 17.02.2014 in I.T.A.No.34/10-11/A-1 for the Assessment Year 2007-08 against the order passed by the Deputy Commissioner of Income Tax Company Circle-1(1), Chennai dated 11.11.2009 in P.A/GIR No.AAACA4127D/AXI-091 for the Assessment Year 2007-2008.

For Appellant : Mr.T.Ravikumar

O R D E R

Judgment was delivered by V.RAMASUBRAMANIAN,J

This appeal is by the Revenue, questioning the wisdom of the Tribunal in deleting the penalty under Section 271(1)(c) of the Act by raising the following substantial questions of law :

> "i. Whether on the facts and circumstances of the case, the Tribunal was right in deleting the penalty levied under Section 271(1)(c) of the Income Tax Act ? and
>
> (ii) Is not the finding of the Tribunal

bad by holding that it was not a case of concealment or furnishing of inaccurate particulars especially when the assessee has made wrong claim and Explanation (1) to Section 271(1)(c) would govern the same ?"

2. Heard Mr.T.Ravikumar, learned Standing Counsel for the Department.

3. In an assessment made pursuant to a notice issued under Section 143(2), the Assessing Officer found that there were four items, on which, the claim of the assessee was wrong. The first related to dis-allowance under Section 94(7). The second related to the purchase of software and treatment of revenue expenditure as capital in nature. The third related to the issue of incidental expenditure, which was found to be not supported by proof. The fourth related to interest on income tax. The assessee has duly debited the amount to its profit and loss account, but it did not add back.

4. The Assessing Officer levied penalty on all the four items upto 100%. The Commissioner (Appeals) confirmed the same. But, the Tribunal ordered deletion of penalty for the reasons stated in paragraph 6 of the order, which reads as follows :

> "It also emanates that the first one of them falling under Section 94(7) is more or less an error of computation. The second one relates to treatment of software expenditure as 'capital' in nature' instead of revenue as claimed. We deem it appropriate to observe that this is a highly debatable issue of perennial nature. Therefore, the assessee cannot be held to have concealed and furnished inaccurate particulars of income. The third instance of incidental expenditure is a case of 100% dis-allowance instead of that @ 20% already made. This is also a divergence of opinion and does not attract penalty. The fourth dis-allowance admittedly is of interest on income tax. The assessee has duly debited this very amount to its profit and loss account but did not add back. We quote case law of Price Water Coopers P.Ltd. Vs. C.I.T. [(2012) 348 ITR 306 (SC)], in identical circumstances and

> hold that this cannot be held to be an instance of concealment and furnishing of inaccurate particulars of income inviting penalty under Section 271(1)(c) of the Act. Therefore, the impugned penalty of Rs.11,47,552/- is deleted."

5. The Revenue is aggrieved on the ground that to attract penalty under Section 271(1)(c), it is enough for the Department to prove that the assessee was guilty of furnishing inaccurate particulars of such income without any deliberate intention.

6. As a pure and simple proposition of law, we have no quarrel with the contention of the learned Standing Counsel for the Department. But, for the purpose of attracting penalty under Section 271(1), the Assessing Officer or the Commissioner (Appeals), in the course of any proceedings under the Act, should be satisfied about certain things that are indicated in Clause (b) or Clause (c) or Clause (d). The satisfaction to be arrived at under Section 271(1) is no doubt an objective satisfaction. Therefore, in an appeal under Section 260-A, all that we are obliged to see is as to whether such a satisfaction was properly arrived at by the Tribunal or not. The Tribunal has given cogent reasons, which we have extracted above, to come to the conclusion that the penalty under Section 271(1)(c) was liable to be deleted.

7. As a matter of fact, in respect of each of the items in dispute, the Tribunal has given cogent reasons for deleting the penalty. Therefore, with the exercise of such a discretion by the Tribunal in favour of the assessee on the only question of penalty, we do not wish to interfere. Hence, the questions of law raised are answered against the appellant.

8. Accordingly, the above appeal is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal 'C' Bench,
Chennai.

2.The Commissioner of Income Tax,
Chennai.

3.The Commissioner of Income Tax(Appeals) I,
Chennai - 34.

4.The Deputy Commissioner of Income Tax
Company Circle - 1(1),
Chennai.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.52660

T.C.A.No.767 of 2015

PUR(CO)
CA(11/12/2015)