

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

I.T.T.A.NO.542 OF 2015

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity) is preferred against the order of the Income Tax Appellate Tribunal, Hyderabad (Tribunal), in I.T.A.No.132/Hyd/2015 dated 01.05.2015.

The respondent herein preferred an appeal before the Tribunal against the order passed by the CIT (Appeals), Hyderabad, for the assessment year 2010-2011 contending that the income determined under Section 115JB of the Act cannot constitute concealment or filing of inaccurate particulars of income; the income so assessed under the MAT provisions cannot constitute concealment; penalty can be imposed either for concealment or filing of inaccurate particulars of income; and the penalty was, therefore, liable to be deleted.

In the order under appeal, the Tribunal held that the assessee had made a claim under Section 10A of the Act for deduction, while computing the book profit under the special provisions of the Act; the deduction under Section 10A of the Act was not allowable to the assessee as per the provisions of the Act, and it was disallowed; however, all the material facts relevant for assessment were disclosed by the assessee at the time of filing of the return itself; a perusal of the penalty order would show that the assessee had disclosed all the relevant figures before the Assessing Officer, and had filed calculation of book profits under Section 115JB of the Act, after claiming exemption under Section 10A of the Act; the assessee company had e-filed the return of income for the earlier year also, but that was not decisive of the issue; the conduct of the assessee was *bona fide*; and it was not the law that wherever there was a disallowance or rejection of

a claim for deduction, claimed by the assessee, it should lead to levy of penalty for concealment of income or filing of inaccurate particulars of income; in **Price Waterhouse Coopers Pvt. Ltd., v. CIT**^[1], the assessee before the Supreme Court had filed a statement of particulars with the return of income; provision towards gratuity was shown as not allowable, but deduction was claimed in the return of income; the Supreme Court held that it was possible that, even the assessee could make 'silly' mistakes, and all that had happened was that, through a *bona fide* and inadvertent error, the assessee, while submitting its return, had failed to add the provisions for gratuity to its income; and, hence, imposition of penalty was not justified.

In the order under appeal, the Tribunal held, that, in the facts of the present case, it was of the view that all the material facts were disclosed by the assessee at the time of assessment, the conduct of the assessee was *bona fide* and, in the absence of any material brought on record on behalf of the revenue to suggest that the assessee's mistake was not *bona fide* or inadvertent, it was not a fit case for levy of penalty on the assessee for concealment of income or furnishing of inaccurate particulars of income. Accordingly, the penalty levied under Section 271(1)(c) of the Act was cancelled.

As held by the Supreme Court in **Price Waterhouse Coopers Pvt. Ltd.**¹, a *bona fide* or an inadvertent error would not justify imposition of penalty. The Tribunal has rightly held that all the material facts were disclosed by the assessee at the time of assessment; and that his conduct was *bona fide*. We find no error in the order of the Tribunal, much less, an error giving rise to a substantial question of law necessitating interference in appeal under Section 260A of the Act.

The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

2nd November 2015

RRB

[\[1\]](#) 348 ITR 306