

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 223 of 2015
Date of decision: 26.8.2015**

**Commissioner of Income Tax (Central), Gurgaon
.....Appellant**

**M/s Parabolic Drugs Limited
.....Respondent**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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?

Present: Mr. Rajesh Sethi, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. The revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 18.11.2014, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A' in ITA No.1091/Chd/2013 for the assessment year 2005-06, claiming following substantial questions of law”-

“1. Whether, in the facts and circumstances of the case, the Hon'ble ITAT was legally justified in deleting the penalty of ₹ 10,84,050/- imposed under Section 271(1)(c) of the Act without appreciating that the disallowance under Section 80IB was made by the Assessing Officer not because of any difference of opinion but because such deduction was not

available to the assessee by virtue of specific provision of law and therefore the claim of deduction made by the assessee amounted to furnishing inaccurate particulars of income attracting penal provisions under section 271(1)(c)?

2. Whether or not the findings have been recorded by ITAT on misreading and misinterpretation of facts and evidence emanating on record?

3. Whether the ITAT did not commit grave error in arriving at such conclusion after adopting erroneous criteria and by importing such facts and circumstances which are contrary to record?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee was in the business of manufacturing of bulk drugs and fine chemicals. During the year under consideration, the assessee had claimed deduction under section 80IB of the Act of ₹ 29,62,491/-. It was found that the assessee had claimed its unit as small scale industry. However, investment in plant and machinery was ₹ 351.59 lacs. The assessee was asked to explain how its unit was small scale industry. Not satisfied with the reply, the Assessing Officer held that the assessee did not fulfil the condition as given under section 80IB(3) of the Act. Therefore, deduction of ₹ 29,62,491/- claimed by the assessee under Section 80IB of the Act was disallowed and added back to its income. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)], who vide order dated 19.11.2000 dismissed the appeal. Since the assessee had furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) of the Act had also been initiated. During the course of penalty proceedings, the Assessing Officer after considering the facts of the case as well as legal position concluded that the assessee had concealed the particulars of income to the

tune of ₹ 29,62,491/-. Therefore, the Assessing Officer imposed penalty under Section 271(1)(c) of the Act at the rate of 100% of the tax sought to be evaded which came to ₹10,84,050/-. Aggrieved by the order, the assessee filed appeal before the CIT(A). Vide order dated 25.9.2013, Annexure A.2, the appeal was allowed on the ground that it was bonafide belief of the assessee that it was a small scale industry in view of various notifications of the Ministry of Industry. It was further held that the assessee had stated all the particulars of plant and machinery as well as calculation of deduction under Section 80IB of the Act in the return of income and thus it could not be said to be concealment of income or furnishing of inaccurate particulars. Not satisfied with the order, the revenue filed appeal before the Tribunal. Vide order dated 18.11.2014, Annexure A.3, the appeal was dismissed. Hence the instant appeal.

3. We have heard learned counsel for the appellant-revenue.
4. Learned counsel for the revenue submitted that vide Order F.No.10/6/97/1P dated 10.12.1997, the Ministry of Industry fixed the investment limit in fixed assets in plant and machinery at ₹ 3 crores in respect of a unit to be eligible as small scale industry which was amended vide order F.No.10(6)/97-1P dated 24.12.1999 and the limit of investment in fixed asset in plant and machinery thereunder was reduced from ₹ 3 crores to ₹ one crore. In such a situation, it was urged that the assessee whose investment in plant and machinery was more than ₹ 3,51,59,225/- had fraudulently claimed deduction under Section 80IB of the Act which had been upheld in appeal by the CIT(A). It was further contended that in such circumstances, levy of penalty under section 271(1)(c) of the Act on account of concealment of income had been rightly imposed by the

Assessing Officer. However, CIT(A) as well as the Tribunal had erroneously recorded a finding that the assessee had bonafide claimed the said deduction and deleted the penalty.

5. After hearing learned counsel for the revenue, we do not find any merit in the appeal.

6. The CIT(A) while accepting the appeal of the assessee had noticed as under:-

“4.3 I have considered the submission of the assessee as well as the impugned order. I have also gone through the plethora of cases relied upon by the assessee. The learned Assessing Officer had initiated the penalty proceedings under section 271(1)(c) as it has been held that the assessee has filed inaccurate particulars and so concealed his income to the extent of ₹ 29,62,491/- in as much as the claim for deduction under Section 80IB(3) on the ground of it being a small scale undertaking was false. As per section 271(1)(c), penalty is to be levied if the assessee has concealed particulars of income or has furnished inaccurate particulars of such income. Assessee has contended that the penalty was not sustainable as the charge contemplated under section 271(1)(c) is not clear.

Be that as it is, it is a fact that deduction has been claimed under Section 80IB(3) in the status of a small scale industry. This was found to be incorrect as per the notification of the Ministry of Industry for small scale units. The investment in plant and machinery was found to be exceeding the prescribed limit. It is the assessee's contention that it was under bonafide belief that it was a small scale industry in view of the various confusing notifications of the Ministry which changed from time and again. It was also emphasized that the books were duly audited and that Form IOCCB was quantified after looking into the conditions for claiming the deduction. Furthermore, assessee stated that as all particulars

of its plant and machinery as well as the calculation of deduction under Section 80IB was furnished in the return of income, so it could not be said that particulars of income were concealed or filed inaccurately.

Here a claim has been made which was found to be incorrect. This claim was on the basis of certificate issued by the auditor in the requisite form 1OCCB. The violation is the investment in plant and machinery exceeded the limit prescribed by the Ministry of industries. Notification as to the limit of investment has been modified in 1997 and 2009 as is evident from the impugned order. All material facts as regards its investment cannot be said to have been withheld by the assessee as the return filed was accompanied by audited accounts and Form 1OCCB. Consequently considering the facts of the case, I am inclined to hold that the assessee had fully disclosed all material facts and so it is apparent that there is neither any concealment of income nor furnishing of inaccurate particulars of its income. The penalty levied is therefore directed to be deleted.”

7. The said findings were affirmed by the Tribunal vide order dated 18.11.2014, Annexure A.3 as under-

“9. We have considered rival submissions and material available on record and do not find any justification to interfere with the order of the learned CIT(Appeals) in cancelling the penalty under Section 271(1(c) of the Act. The assessee while making claim of deduction under Section 80IB of the Act in computation of income disclosed complete facts and claimed to have permanent registration as small scale unit issued by District industries Centre, Patiala. The claim of assessee was qualified by the auditor as well. The assessee referred to various notifications issued by the concerned department through which time to time, the monetary limits were varying and ultimately the last notification was also favourable to the assessee. In the case of the assessee, the

value of exclusive plant and machinery as on 1.4.2004 was ₹ 2.93 crores and because of the addition made in the assessment year under appeal of ₹ 58.33 lacs, the total investment comes to ₹ 3.51 crores. It is therefore clear that the assessee was small scale industrial unit and was entitled for deduction under section 80IB earlier and it is only because of some additions made in year under consideration, the assessee would not have qualified for deduction under Section 80IB of the Act. The assessee therefore made a bonafide claim of deduction under section 80IB as per the notification issued lastly which covered such unit upto ₹ 5 crores though there may be some restriction thereon. It is therefore not a case of filing of inaccurate particulars of income or concealing the particulars of income. The decision cited clearly support the finding of the learned CIT(Appeals) for cancelling the penalty under Section 271(1)(c) of the Act.”

8. The CIT(A) as well as the Tribunal had concurrently concluded that the assessee in the computation of income while claiming deduction under Section 80IB of the Act had disclosed complete facts. The assessee had claimed permanent registration as small scale unit by District Industries Centre, Patiala. The books of account of the assessee were duly audited. The claim made by the assessee was under bonafide belief that it was a small scale industry. The error on the part of the assessee had occurred due to various notifications issued by the concerned Ministry from time to time fixing the limit of investment to qualify for being small scale industry. The value of exclusive plant and machinery as on 1.4.2004 was ₹ 2.93 crores and because of the addition made in the assessment year under appeal of ₹ 58.33 lacs, the total investment came to ₹ 3.51 crores. In such circumstances, it could not be said that the assessee had not made a bonafide claim of deduction under Section 80IB of the Act. Therefore, the

penalty was rightly deleted by CIT(A) and upheld by the Tribunal. We do not find any error in the approach adopted by the CIT(A) as well as the Tribunal. No substantial question of law arises. Consequently, the appeal is dismissed.

(Ajay Kumar Mittal)
Judge

August 26, 2015
'gs'

(Ramendra Jain)
Judge