IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 295 of 2015 (O&M)

Date of Decision: 5.10.2015

The Principal Commissioner of Income Tax, Patiala
....Appellant.

Versus

M/s H.M. Steels Ltd., Dirba, Sangrur
...Respondent.

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

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

PRESENT: Mr. Zora Singh Klar, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 21.1.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 910/CHD/2014, for the assessment year 2006-07, claiming the following substantial question of law:-

> Whether in the facts and in law, the Hon'ble ITAT was correct in law in deleting the penalty levied on the ground that in similar circumstances the penalty had

already been deleted for the immediately subsequent year without appreciating the facts of both these years for entirely different from each other?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacturing of MS Ingot, MS Bars, ERW Pipes and GI Pipes. It filed its return on 30.11.2006 for the assessment year 2006-07 declaring the income at ₹ 3,67,510/- and ₹ 4,85,74,964/-for the purposes of Section 115JB of the Act. The said case was taken up for scrutiny under CASS. The assessment under Section 143(3) of the Act was completed by the Assessing Officer vide order dated 5.9.2008 at a total income of ₹ 3,67,510/-. The Commissioner of Income Tax, Patiala vide order dated 31.8.2010 under Section 263 of the Act finding the said order to be erroneous as well as prejudicial to the interest of the revenue, set aside the same for re-examination of deduction claimed by the assessee under Section 80IC of the Act. Thereafter, the Assessing Officer during proceedings under Section 143(3) read with Section 263 of the Act vide order dated 23.12.2011 made the total addition of ₹ 2,23,00,432/- on account of disallowance under Section 80IC of the Act in respect of transport subsidy, bank interest and mibor premium. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 28.1.2013 dismissed the said appeal. The Assessing Officer had initiated penalty proceedings under Section 271 (1)(c) of the Act for concealment of income and for furnishing inaccurate particulars. The Assessing Officer vide order dated 21.3.2014 (Annexure A-1) imposed penalty of ₹ 75,06,450/- upon the assessee.

Being aggrieved by the said order, the assessee filed an appeal before the CIT(A) who vide order dated 28.8.2014 (Annexure A-2) deleted the penalty of ₹ 75,06,450/- imposed by the Assessing Officer. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 21.1.2015 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal holding that under the similar circumstances, the Tribunal had deleted the penalty for the assessment year 2007-08. Hence, the present appeal by the revenue.

3. Learned counsel for the revenue submitted that the deduction under Section 80IC of the Act was not allowable on the transport subsidy, bank interest and mibor premium as rightly held by the Assessing Officer. It was urged that in such circumstances, the CIT(A) had wrongly deleted the penalty of ₹ 75,06,450/-. It was further argued that the Tribunal has also erred in holding that in the similar circumstances it had deleted the penalty for the assessment year 2007-08 which was entirely different from the facts involved in the present case.

4. After hearing learned counsel for the revenue, we do not find any merit in the said submissions. The additions on account of disallowance under Section 80IC of the Act had been made by the Assessing Officer holding that the transport subsidy was not earned through any manufacturing process and it was not profit derived from the business of the assessee. Additionally, the bank interest and mibor premium were also disallowed considering that these incomes were not derived from industrial undertaking but were merely incidental to the business of industrial enterprises. The CIT(A) while deleting the penalty, *inter alia,* noticed that in the assessment year 2005-06, the assessee

had claimed deduction under Section 80IC of the Act which was allowed by the Assessing Officer under Section 143(3) of the Act. In the present case, the return for the assessment year 2006-07 was filed on the basis of audited balance sheet and audit certificate issued under Section 80IC of the Act which was allowed by the Assessing Officer vide order dated 5.9.2008. The said order was set aside in revisional proceedings under Section 263 of the Act and the disallowance was made subsequently. All the information, particulars and facts were duly disclosed with the return of income and only view contrary to the original assessment was taken in the re-assessment proceedings based on the same material. According to the CIT(A), there was no concealment of income or furnishing of inaccurate particulars. The CIT(A) had noticed as under:-

> "4.3. I have considered the submissions made above. The additions have been made by the A.O. against transport subsidy, Bank interest and Mibore Premium. The A.O. has disallowed the transport subsidy holding that it is not earned through any manufacturing process and it is not a profit derived from the business of the assessee. Similarly, the Bank interest and Mibor Premium has been disallowed considering that these income are not derived from industrial undertaking but are merely incidental to the business of industrial enterprises. However, similar additions made in A.Y. 2007-08 has already been deleted by the Hon'ble ITAT, Chandigarh Bench. It is further noted that in A.Y. 2005-06, the appellant claimed deduction u/s 80IC of the Act which

was allowed u/s 143(3) of the IT Act, 1961. The return for A.Y. 2006-07 was filed on the basis of audited balance sheet and audit certificate issued u/s 80IC which was also allowed u/s 143(3) vide order dated 05.09.2008. The assessment order was however, set aside and disallowance was made subsequently. All the information, particulars and facts are duly disclosed with the return of income and only view contrary to the original assessment was taken in the re-assessment proceedings based on the same materials. Therefore, it is seen that the appellant had duly disclosed the primary facts in the return. In the case of **CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC)**, it is held that "A glance at the provisions of Section 271(1)(c) of the Income Tax Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars in his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, nor exact or correct, no according to the truth or erroneous.

Considering the facts of the case, therefore, it is noted that all the particulars and primary facts are duly disclosed by the appellant. The books of accounts are audited and Auditor's certificate u/s 80IC was submitted. Therefore, looking into the entirety of the facts and the case laws discussed above, in my opinion, there is no concealment of income or furnishing of inaccurate particulars in this case. The penalty imposed by the A.O. is, therefore, cancelled."

5. The Tribunal had affirmed the aforesaid findings of the CIT (A). Following the judgment of the Apex Court in **Commissioner of Income Tax v. Reliance Petroproducts Ltd. (2010) 322 ITR 158 (SC)**, it was observed as under:-

"7. Further in the similar circumstances the Tribunal deleted the penalty in Assessment Year 2007-08 by making following observations:-

"The Ld. CIT(A) has correctly adjudicated the issue because part of the addition has already been deleted by the Tribunal. Otherwise mere claim of deduction under bonafide belief cannot be taken as concealment of income or furnishing inaccurate particulars of income particulars. In this regard the Hon'ble Supreme Court has clearly observed in case of CIT v. Reliance Petroproducts Pvt. Ltd., 322 ITR 158 (SC):

> “A glance at the provisions of Section 271(1)(c) of the Income Tax Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars in his income. The meaning of the word “particulars” used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is

> the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, nor exact or correct, no according to the truth or erroneous."

Therefore following the same we uphold the order of the Ld. CIT(A).

In view of the above findings we are of the opinion that Ld. CIT(A) has correctly decided the issue and therefore we uphold his order."

6. Learned counsel for the revenue was not able to demonstrate that the approach of the CIT(A) or the Tribunal was erroneous or perverse or that the findings of fact recorded were based on misreading or misappreciation of evidence on record. The view of the CIT(A) and the Tribunal is a plausible view which warrant no interference.

7. In view of the above, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 5, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**