

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

I.T.T.A.No.673 of 2016

JUDGMENT: (per *Hon'ble Sri Justice Sanjay Kumar*)

This appeal by the Revenue is directed against the order dated 13.08.2010 passed by the Income Tax Appellate Tribunal, Hyderabad 'B' Bench, Hyderabad, in I.T.A.No.1076/Hyd/2008 in relation to the Assessment Year 2004-05.

The substantial questions of law sought to be raised by the Revenue in this appeal are as under:

- “1. Whether, on the facts and in the circumstances of the case, the order of the Tribunal is not perverse?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in deleting the penalty levied under Section 271(1)(C) of the Act?”

Perusal of the order under appeal reflects that the Tribunal was of the opinion that as the assessee had not concealed any particulars but had made a claim, which was disallowed by the Revenue, the judgment of the Supreme Court in ***Commissioner of Income-Tax v. Reliance Petroproducts Pvt. Ltd***¹ would squarely apply. The Tribunal therefore upheld the decision of the Commissioner of Income-Tax (Appeals)-V, Hyderabad, holding that no penalty under Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act of 1961') could be levied.

When the assessee attempted to write off the advances on capital goods to the tune of Rs.2,25,88,000/- and investments to the tune of Rs.1,08,00,000/-, an explanation was sought by the

¹ [2010] 322 ITR 158 (SC)

Assessing Officer, and the assessee itself conceded that the written off advances and investments were wrongly claimed as revenue expenditure. The Assessing Officer accordingly acted upon this concession but was of the opinion that penalty proceedings under Section 271(1)(c) of the Act of 1961 should be initiated. Such penalty having been levied under Order dated 29.03.2007 of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) – V, Hyderabad. The Commissioner held in favour of the assessee and the same was confirmed by the Tribunal leading to the present appeal.

Ms. Kiranmayee, learned standing counsel for the Revenue, would contend that as the assessee responded to the show cause notice but had not offered an explanation in terms of the wrong claim made by it, Explanation (1) to Section 271(1)(c) of the Act of 1961 would be attracted. This Explanation reads as under:

“Explanation 1.- Where in respect of any facts material to the computation of the total income of any person under this Act,

- (A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner of (Appeals) or the Principal Commissioner or Commissioner to be false, or
- (B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is *bona fide* and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”

It is relevant to note that this Explanation relates to 'concealment' of income. In the present case, there was no actual concealment of income by the assessee inasmuch as the correct figures were disclosed but a claim was made to write off the same as revenue expenditure, which was disallowed by the Revenue.

A similar fact situation was before the Supreme Court in **Reliance Petroproducts Private Limited**¹. Dealing with a wrongful claim made by the assessee, which was thereafter disallowed by the Revenue, the Supreme Court observed that unless 'inaccurate' particulars of income or 'concealment' of income is present, the provisions of Section 271(1)(c) of the Act of 1961 would not be attracted. The contention of the Revenue that an incorrect claim for expenditure would amount to inaccurate particulars of income was categorically rejected and the Supreme Court observed that accepting this contention would mean that in every case where a claim is made in the return which is not accepted by the Revenue, the assessee would invite penalty under Section 271(1)(c) of the Act of 1961. The Supreme Court declared that this was not the intendment of the Legislature.

Significantly, in **Reliance Petroproducts Private Limited** the Revenue conceded that the case did not amount to concealment of income. But, in the present case, an attempt is now made to bring an identical fact situation within the ambit of 'concealment' of income. We are however not impressed in as much as there must be an actual failure by the assessee to disclose relevant particulars for the case to fall within the ambit of 'concealment' of income. Furnishing of the correct particulars in the context of a wrongful claim would *per se* not amount to

‘concealment’ of income. We therefore see no grounds to interfere with the order under appeal. No question of law, much less a substantial question of law, arises for consideration in the light of the settled legal position laid down in ***Reliance Petroproducts Private Limited¹***.

The appeal is accordingly dismissed. No order as to costs.

SANJAY KUMAR, J

M.S.K.JAISWAL, J

Date: 15.12.2016
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