

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 390 of 2015 (O&M)

Date of Decision: 29.3.2016

The Pr. Commissioner of Income Tax-I, Chandigarh

....Appellant.

Versus

M/s Rana Sugar Ltd., Chandigarh

...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 MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Ms. Urvashi Dhugga, 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 6.2.2015 (Annexure A-5) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 964/CHD/2014, for the assessment year 2007-08, claiming the following substantial questions of law:-

- i) Whether the Hon'ble ITAT is right in law in upholding the decision of the CIT(A) deleting the penalty levied by relying upon the decision of Reliance Petro Products, when the issue was

clearly covered by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Zoom Communication (P) Ltd. (2010) 327 ITR 510?

- ii) Whether the Hon'ble ITAT is right in law in deleting the penalty without considering that non furnishing of documentary evidences regarding any expenditure claimed tantamounts to furnishing of inaccurate particulars of income?
- iii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in law in deleting the penalty levied by the AO u/s 271(1)(c) without considering that an incorrect claim in law was made in reducing the deferred tax liability from the books profits and tax liability u/s 115JB was maliciously reduced when such amount was never credited in the P&L Account?

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 30.10.2007 declaring nil income. The case was selected in scrutiny and the Assessing Officer vide assessment order dated 13.11.2009 (Annexure P-1) under Section 143(3) of the Act made the following additions:-

- (i) ₹ 57,64,059/- on account of diversion of funds to sister concern;

- (ii) ₹ 2,38,74,691/- on account of capitalization of interest on capital work in progress;
- (iii) ₹ 27,562/- on account of disallowance of proportionate interest under Section 14-A of the Act;
- (iv) ₹ 3,01,940/- on account of disallowance under Section 40(a)(ia) of the Act; and
- (v) ₹ 16,14,610/- on account of capitalization of expenditure on account of building repair and maintenance.

Besides charging interest under Sections 234B, 234C and 234D of the Act, proceedings for levy of penalty under Section 271(1)(c) of the Act were also initiated.

3. Feeling aggrieved by the aforesaid assessment order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 1.3.2011 confirmed the additions mentioned at Sr. No. (ii) to (v) and deleted the addition mentioned at Sr. No.(i) above. Against the order dated 1.3.2011, the assessee filed an appeal challenging the additions at Sr. No. (ii) to (v) confirmed by the CIT(A) whereas the revenue challenged the addition at Sr. No. (i) deleted by the CIT(A) before the Tribunal. The Tribunal vide order dated 28.1.2015 (Annexure A-2) set aside the order of the CIT(A) and directed the Assessing Officer to make disallowance on pro-rata basis. However, the appeal of the revenue was allowed for statistical purposes. The Assessing Officer vide order dated 28.3.2013 (Annexure A-3) imposed penalty amounting to

₹ 1,10,78,245/- under Section 271(1)(c) of the Act on the issues confirmed by the CIT(A). The assessee assailed the order, Annexure A-3, passed by the Assessing Officer before the CIT(A) who vide order dated 13.8.2014 (Annexure A-4) deleted the said penalty imposed under Section 271(1)(c) of the Act. The order, Annexure A-4, was challenged by the revenue in appeal before the Tribunal. The Tribunal vide order dated 6.2.2015 (Annexure A-5) confirmed the order of the CIT(A) and dismissed the appeal. Hence, the present appeal.

4. We have heard learned counsel for the revenue.

5. The primary issue that arises for consideration in this appeal is whether the CIT(A) had rightly deleted the penalty under Section 271(1)(c) of the Act which has been upheld by the Tribunal. The penalty had been levied in respect of disallowance made in the quantum proceedings on account of (i) capitalization of interest related to capital work in progress under Section 36(1)(iii) amounting to ₹ 2,38,74,691/-; (ii) disallowance under Section 14A of the Act amounting to ₹ 27,562/-; (iii) addition on account of building repair and maintenance expenses amounting to ₹ 16,14,610/-; (iv) addition on account of deferred tax amounting to ₹ 2,21,86,000/- to the book profit under Section 115JB of the Act.

6. It would be apposite to refer to the findings recorded by the CIT(A) while cancelling the penalty under Section 271(1)(c) of the Act. Taking up the first issue of disallowance on account of capitalization of interest related to capital work in progress under Section 36(i)(iii) of the Act, while deleting the penalty, the CIT(A) had noticed as under:-

“3.3. I have considered the facts of the issue. The

concealment penalty has been levied on account of proportionate disallowance of interest on capital work in progress. The disallowance was made due to non furnishing of details of utilization of various secured and unsecured loans and cash flow statement and also that the manner in which the interest was capitalized had not been provided. The disallowance has been made by the Assessing Officer on proportionate/estimated basis and for non furnishing of certain details. The appellant had not concealed any particulars of its income or had not furnished inaccurate particulars and so the concealment penalty on such disallowance could not be levied in view of the judgment of the Hon'ble Supreme Court in **Commissioner of Income Tax v. Reliance Petroproducts Ltd. (2010) 322 ITR 158 (SC)**. Hence, the concealment penalty levied on this issue is cancelled.”

7. The penalty for disallowance of proportionate interest under Section 14-A of the Act was cancelled by the CIT(A) with the following observations:-

“4.3. I have considered the facts of the issue. Penalty for concealment can be levied when the assessee has concealed particulars of income or furnished inaccurate particulars. The disallowance has been made u/s 14A of the Act. The appellant had

not concealed particulars of its income or had not furnished inaccurate particulars and so penalty for concealment cannot be levied on such disallowance in view of the judgment of the Hon'ble Supreme Court in **Commissioner of Income Tax v. Reliance Petroproducts Ltd. (2010) 322 ITR 158 (SC)**. Concealment penalty levied on this issue is accordingly cancelled. Ground of appeal No.3 is allowed.”

8. Regarding levy of penalty on the disallowance on account of repair and maintenance under Section 40(a)(ia) of the Act, the CIT(A) holding the penalty to be unsustainable on this count had recorded as under:-

“5.3. I have considered the facts of the issue. The appellant explains that the disallowance was made on estimated basis without making any specific disallowance out of the expenses claimed under the head 'building repairs and maintenance'. I am entirely in agreement with the explanation of the appellant, since disallowance @ 1% of total investment in building was made on estimated basis to restrict the expenses on current repairs of the building and this was done as per the directions of Hon'ble ITAT in A.Y. 2004-05. The disallowance is purely an estimate and so penalty for concealment cannot be levied in view of the judgment of Hon'ble Punjab and Haryana High

Court in the case of Harigopal Singh (258 ITR 85).

The penalty for concealment levied on this issue is accordingly cancelled. Ground of appeal No.4 is allowed.”

9. Examining the levy of penalty on the addition made on account of deferred tax amounting to ₹ 2,21,86,000/- computed on the book profits under Section 115JB of the Act, the CIT(A) held that penalty was not exigible as clause (viii) was inserted in Explanation -1 below Section 115JB of the Act by Finance Act, 2008 retrospectively from 1.4.2001. The relevant conclusions are quoted as under:-

“6.3. I have considered the facts of the issue. Clause (viii) was inserted in Explanation-1 below Section 115JB(1) by Finance Act, 2008, but with retrospective effect from 01.04.2001 and so the appellant could not have known before filing the return of income of the year in question i.e. A.Y. 2007-08 that deferred tax liability was not to be reduced for the purposes of calculation of book profit, if it was not credited to the profit and loss account. Therefore, the Assessing Officer was not right in levying the penalty under Section 271(1)(c) on this disallowance made in calculation of book profit and so the penalty levied on this issue is also cancelled. Ground of appeal No.5 is allowed.”

10. On appeal by the revenue, the Tribunal had affirmed the said findings of the CIT(A) by holding that the assessee had neither

concealed particulars of income nor furnished inaccurate particulars of income. Further, the Tribunal held that the disallowance on account of capitalization of interest related to capital work in progress under Section 36(1)(iii) of the Act, the Distillery Division of the assessee had already started functioning and since the details of funds utilized for individual projects were not reconcilable, the assessee had agreed for disallowance of proportionate interest for which the assessee cannot be held liable for either concealing particulars of income or furnishing inaccurate particulars of income. Similarly, though the issue of disallowance of proportionate interest under Section 14A of the Act was not agitated before the Tribunal due to smallness of amount of ₹ 27,562/- but due to the factum that interpretation of this provision had not been settled finally, therefore, no penalty under Section 271(1)(c) of the Act was exigible. Equally the disallowance on account of repair and maintenance under Section 40(a)(ia) of the Act was made on estimate basis and finally the disallowance had been restricted by the Tribunal at ₹ 1 lac during quantum proceedings in ITA No. 429/CHD/2011. Regarding deletion of penalty by the CIT(A) on addition made on account of deferred tax computed on book profits under Section 115JB of the Act, the Tribunal had observed that clause (viii) was inserted to Explanation 1 below Section 115JB(1) by Finance Act, 2008 but was made retrospective. Since the present case pertained to the assessment year 2007-08, the assessee would not know that retrospective amendment was likely to come later. No illegality or perversity could be demonstrated by learned counsel for the revenue that the findings of the CIT(A) and the Tribunal were erroneous or perverse in any manner.

11. In **CIT v. Reliance Petroproducts (P) Limited (2010) 322 ITR 158**, the Apex Court had held that under Section 271(1)(c) of the Act, there has to be concealment of income of the assessee or the assessee must have furnished inaccurate particulars of his income. In the present case, the claim made by the assessee has not been shown to be suffering from any of these conditions. In the absence of any finding recorded by the CIT(A) or the Tribunal with regard to the claim of the assessee that it was malafide, there is no error in cancelling the penalty imposed by the Assessing Officer.

12. Further, reliance of the revenue on the judgment of the Delhi High Court in **Commissioner of Income Tax v. Zoom Communication Pvt. (2010) 327 ITR 510** is of no help to them as therein the High Court was considering the question of levy of penalty under Section 271(1)(c) of the Act wherein it had concluded to be a case of furnishing of inaccurate particulars of income with malafide intention which is not the case herein.

13. No scope for interference by this Court is made out so as to take a different view expressed by the CIT(A) and affirmed by the Tribunal. Thus, no substantial question of law arises. The appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 29, 2016
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(RAJ RAHUL GARG)
JUDGE