

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

I.T.T.A. No.712 of 2017

Dt: 21-11-2017

Between:

The Commissioner of Income Tax-I,
Hyderabad

....Appellant

and

M/s.Bagga Distilleries Hyderabad (P) Ltd.,
Hyderabad

....Respondent

Counsel for the Appellant:

Mr.J.V.Prasad

Sr.Standing Counsel for IT Dept.,

The Court made the following:



Judgment: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Appeal is filed by the Revenue against Order, dated 14-03-2012, in IT(SS)A.No.28/Hyd/2011 on the file of the Income Tax Appellate Tribunal, Bench 'B', Hyderabad (for short 'the Tribunal'), whereby it has set aside the imposition of penalty of Rs.1.27 Crores under Section 158 BFA(2) of the Income Tax Act, 1961 (for short 'the Act').

In the Appeal, the Revenue has raised the following substantial questions of law:

- “1. Whether in the facts and circumstances of the case and in law, Hon'ble ITAT is justified in deleting the penalty imposed u/s. 158BFA (2) on the basis that the undisclosed income has been determined on estimate basis without appreciating that the estimation of undisclosed income was based on the material seized during the course of search at the premises of the Assessee ?
2. Whether in the facts and circumstances of the case and in law, Hon'ble ITAT is justified in deleting the penalty imposed u/s. 158BFA(2) without appreciating that the spirit of provisions of Sec. 158BGA(2) is differing from the provisions of Sec. 271(1)(c) ?”

Following a search and seizure operation conducted at the premises of the respondent-assessee on 03-01-2002, a

notice was issued under Section 158 BC of the Act, in response to which the respondent has filed returns showing its undisclosed income as NIL. In the course of assessment for the block period from 1996-1997 to 2001-2002, huge difference between the number of bottles issued and the number of bottles sold was found. The respondent claimed that the difference was on account of breakage of bottles and that the percentage of breakage varies for different sizes of bottles. Adopting the breakage of 6%, the Assessment Officer (AO) has made an addition of Rs.4,35,60,320/-. While examining the cost of purchases of bottles, the AO has observed that the respondent has inflated the cost of purchases. Accordingly, he has determined the undisclosed income at Rs.10,20,51,830/- and levied the penalty.

In the appeal filed by the respondent, the Commissioner of Income Tax (Appeals) confirmed the order of the AO. The Tribunal, however, set aside both the orders in the appeal filed by the respondent.

In support of its conclusion that the respondent is not liable for penalty, the Tribunal held as under:

“A reading of section 158BFA(2) makes it clear that imposition of penalty under this provision is not mandatory in each and every case where undisclosed income has been determined. This provision allows the assessing officer to use his discretion either to impose or not impose penalty after taking into consideration the undisclosed income will not automatically result in imposition of penalty under section 158BFA (2) of the Act. The Hon’ble Rajasthan High Court in the case of CIT vs. Satyendrakumar Dosi (315 ITR 172) and Hon’ble Bombay High Court I the case of CIT vs. Dodsai Limited (312 ITR 112) (Bom) have also decided the law as such. Therefore, considering the fact that the undisclosed income has been determined purely on estimate basis and keeping in mind the order passed by the Jaipur Bench of ITAT, and the law laid down by the Bombay High Court and Rajasthan High Courts discussed above, we are of the considered opinion that no penalty can be imposed under section 158BFA (2) of the Income Tax Act, 1961 against the appellant. In view of the above, we delete the penalty imposed and allow the claim of the assessee.”

After hearing Mr.J.V.Prasad, learned Senior Standing Counsel for Income Tax Department, we agree with the opinion of the Tribunal that the addition of undisclosed income was due to determination of income on estimate basis rather than on account of deliberate suppression of income by the respondent. In our opinion, the Tribunal’s finding in this regard is proper and sound. The substantial

questions of law are, accordingly, answered against the Revenue.

The Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 21-11-2017
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