

Gurbax Singh  
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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
CHANDIGARH**

**ITA No. 378 of 2010  
Date of decision: 4.5.2017**

**Commissioner of Income Tax-I, Ludhiana**

**.....Appellant**

**Vs.**

**M/s Abhishek Industries Limited, Ludhiana**

**.....Respondent**

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

Present: Mr. Rajesh Katoch, Senior Standing counsel for the appellant.

Mr. Manpreet Singh Kanda, Advocate for the respondent

**Ajay Kumar Mittal,J.**

1. The appellant-revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 24.07.2009, Annexure A.VI, passed by the Income Tax Appellate Tribunal, Chandigarh Bench ‘A’, Chandigarh (in short, “the Tribunal”) in I.T.A. No.485/Chd/2009 for the assessment year 2003-04, claiming following substantial question of law:-

“Whether on the facts and in law, the Hon’ble ITAT is justified in deleting the penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961 amounting to ₹ 47,77,500 /- ignoring the fact that the assessee had furnished inaccurate particulars of its income by claiming wrong

deduction under Section 80IA of the Income Tax Act, 1961 on interest income?

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The respondent-assessee is a company. It filed its return of income for the assessment year 2003-04 on 29.11.2003 declaring an income of ₹ 10,93,766/-. The assessee computed the profit under Section 115JB of the Act at ₹ 9,43,53,675 /-. The return was processed under Section 143(1) of the Act on 31.03.2004. Subsequently, the case was selected for scrutiny and notice under Section 143(2) of the Act was issued and served upon the assessee on 7.7.2004. The assessee revised its return of income on 01.11.2004 showing the same income as per original return. However, an amount of ₹ 5,50,74,289/- on account of sales tax subsidy, shown as revenue receipt in the original return was reflected as capital receipt in the revised return and consequently the profit under Section 115JB of the Act was recomputed and revised to ₹ 12,17,38,567/- During the course of assessment proceedings, it was inter alia noticed by the Assessing Officer that the assessee had shown ₹ 65,00,000 /- as other income in the profit and loss account of the power co-generation division of the company. This other income was nothing but interest income received by the assessee. The assessee claimed deduction under Section 80IA of the Act on this interest income. As the interest income was 'income from other sources' and not profit 'derived from' an individual industrial undertaking, deduction under Section 80IA of the Act was wrongly claimed by the assessee on this income. The Assessing Officer disallowed the claim of deduction under Section 80IA of the Act on interest income treating it as 'income from other sources' and not

business income. The assessment was finalized on 07.02.2006 at total income of ₹ 4,66,85,460/- as against the returned income of ₹ 10,93,764/- vide order passed under Section 143(3) of the Act. Penalty proceedings under Section 271(1)(c) of the Act were also initiated. The assessee preferred an appeal against the assessment order before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 4.12.2006, Annexure A.III, the CIT(A) and the Tribunal vide Annexure A.IV dismissed the ground relating to claim of deduction under Section 80IA of the Act on interest income of ₹ 65,00,000/- as not pressed. Thus, it was held by the Assessing Officer that the assessee intentionally and deliberately furnished inaccurate particulars of income on interest income by claiming the same as deduction under Section 80IA of the Act. Vide order dated 18.09.2008, Annexure A.II, the Assessing Officer levied a penalty of ₹ 47,77,500/- @ 200 per cent of the tax sought to be evaded under Section 271(1) (c) of the Act on this income. Aggrieved by the order passed under Section 271(1) (c) of the Act, the assessee filed an appeal before the CIT(A). Vide order dated 27.02.2009, Annexure A.V, the CIT(A) deleted the penalty. Not satisfied with the order, the revenue filed an appeal before the Tribunal. Vide order dated 24.07.2009, Annexure A.VI, the Tribunal affirmed the decision of CIT(A) in deleting the penalty and dismissed the appeal filed by the revenue. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the parties.

4. Admittedly, the assessee company declared income of ₹ 10,93,764/- in its return filed on 29.11.2003. It computed the profit under Section 115JB of the Act at ₹ 9,43,53,675/- which was processed under Section 143(1) of the Act on 31.03.2004. On scrutiny of the case, notice

under Section 143(2) of the Act was served upon the assessee on 7.07.2004. The assessee *inter alia* claimed deduction under Section 80IA of the Act on interest income. The Assessing Officer was of the view that interest income was from other sources and not profit derived from an industrial undertaking. In appeal before the CIT(A) and the Tribunal, this ground was not pressed by the assessee and accordingly was held against the assessee. Ultimately, it was held by the Assessing Officer that the assessee intentionally furnished inaccurate particulars of income on interest income by claiming the same as deduction under Section 80IA of the Act. Case of the assessee was that on the advise of the Chartered Accountant, the claim was made by revising the return. It has been categorically recorded by the Tribunal that even if it is assumed that the claim made by the assessee on the advise of Chartered Accountant was wrong, still it was not a good ground for imposing penalty under Section 271(1)(c) of the Act, as two conditions are required to be satisfied i.e. firstly there should be furnishing of inaccurate particulars and secondly, there must be concealment of income. Even if there was wrong claim, it could be denied by the Assessing Officer. It could be a good case for addition but not for penalty. It was concluded by the Tribunal that the assessee did not furnish inaccurate particulars with the intention to conceal income and rather it made a claim on the advise of the chartered accountant which was found to be not correct. Thus, the Tribunal rightly concurred with the findings recorded by the CIT(A) and dismissed the appeal filed by the revenue. The relevant findings recorded by the Tribunal read thus:-

“The stand of the assessee is that on the advise of the Chartered Accountant it was claimed by revising the return.

There is no dispute to the fact that interest income is not an allowable deduction under Section 80IA of the Act. Even if it is presumed that the claim made by the assessee on the advice of the Chartered Accountant was wrong, still is not a good ground for imposing penalty under Section 271(1)(c) of the Act because firstly there should be furnishing of inaccurate particulars and secondly there must be concealment of income. Even if there is a wrong claim, it can be denied by Assessing Officer. It may be a good case for addition but not for penalty. As far as the argument of the learned DR that this ground was not pressed before the Tribunal, again cannot be a good ground for imposing penalty, because the assessee filed the certificate during assessment proceedings not after getting the order of the Tribunal. The decision from the Hon'ble Jurisdictional High Court for claiming any deduction on the advice of the counsel in the case of *CIT Vs. Amarnath* (2008) 16 DTR (P&H) 326, wherein the Tribunal was held to be justified in deleting the penalty under Section 271(1)(c), further fortifies the case of the assessee. Even otherwise, no such deduction was claimed in the original return and it was only claimed during assessment proceedings under Section 143(3) on the advice of the Chartered Accountant. It is not the case that the assessee furnished inaccurate particulars with the intention to conceal income rather it made a claim on the advice of the Chartered Accountant, which was found to be wrong. In view of these facts and judicial pronouncements, we have not found any infirmity in the impugned order, the same is upheld."

5. The findings have recorded by the Tribunal after appreciating the entire material on record and the relevant provisions of the law. In *Commissioner of Income Tax Faridabad Vs. Olympia Electronics Private Limited*, ITA No. 695 of 2008 decided on

21.08.2013 relied upon by the learned counsel for the respondent-assessee while dealing with similar issue, it has been recorded by this Court as under:-

“It was specifically held by the Tribunal that prior to 2003, before the Hon’ble Apex Court in the case of ***Pandian Chemical’s Vs. CIT***, (2003) 262 ITR 278 and ***CIT Vs. Sterling Foods***, (1999) 237 ITR 579, the issue was a debatable one and the assessee had in its return of Income made a mention by giving a note to the computation of income which was filed alongwith the return of income. It was concluded that in such circumstances, there was no concealment or furnishing of inaccurate particulars.

6. Furthermore, the Hon’ble Apex Court in ***Commissioner of Income Tax Vs. Reliance Petro Products Private Limited*** (2010) 322 ITR 158 had held that mere making of a claim which was ultimately found to be unsustainable may not by itself amount to furnishing of inaccurate particulars regarding the income. It was recorded as under:-

“We have already seen the meaning of the word “particulars” in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.”

7. Learned counsel for the appellant-revenue has not been able to produce any material on record to controvert the findings recorded by the Tribunal. Thus, no substantial question of law arises and the appeal stands dismissed.

**(Ajay Kumar Mittal)**  
**Judge**

**May 04, 2017**  
**'gs'**

**(Ramendra Jain)**  
**Judge**

Whether speaking/reasoned

**Yes**

Whether reportable

**Yes**