

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

ITA No. 263 of 2017 (O&M)
Date of decision: 21.7.2017

The Pr. Commissioner of Income Tax (Central), Chandigarh

.....Appellant

Vs.

**M/s SEL Manufacturing Co. Ltd, Plot No.273-74, Dhandari Kalan, G.T.
Road, Ludhiana.**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

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

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 28.10.2016, Annexure A.IV, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, “the Tribunal”) in ITA No. 506/CHD/2015, for the assessment year 2008-09, claiming following substantial questions of law:-

- (i) “That the Hon’ble ITAT, Chandigarh has erred in law and on facts in cancelling the penalty under Section 271(1)(c) to the tune of ₹ 29,80,390/- in respect of addition of ₹ 96,45,276/- on account of sundry balances written off which was not suo motto offered for taxation even though the same was taken into consideration for claiming deduction under Section 80IB of the Income Tax Act, 1961, by the assessee.

(ii) That the assessee had clear cut intention to conceal the income and defraud the payment of due taxes?

(iii) That the order of the Hon'ble ITAT is perverse.

2. A few facts necessary for adjudication of the controversy involved, as narrated in appeal, may be noticed. During the course of assessment proceedings, it was noticed by the Assessing Officer that sundry balances written off amounting to ₹ 96,45,276/- had been added back to the profits eligible for deduction under Section 80IC of the Act, but the said amount of ₹ 96,45,276/- had not been added back by the assessee in the computation of total income. The Assessing Officer asked the assessee to show cause as to why sundry balances written off amounting to ₹ 96,45,276/- be not added back to the taxable income of the assessee. In its reply dated 11.10.2010, the assessee stated that due to inadvertence, the amount was omitted to be added back in the computation of the income. The assessee also requested the Assessing Officer to add back the amount of ₹ 96,45,276/- in the computation of income. It was observed by the Assessing Officer that the assessee was attributing the error to an inadvertent mistake whereas it was a deliberate attempt to evade the tax corresponding to the said income by not showing it to be a part of the total taxable income. Therefore, the Assessing Officer, while adding back the amount of ₹ 96,45,276/- to the total taxable income of the assessee, also initiated penalty proceedings under Section 271(1)(c) of the Act. Not satisfied with the explanation furnished by the assessee, the Assessing Officer imposed penalty amounting to ₹ 29,80,390/- under Section 271(1)(c) of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. It was observed by the

CIT(A) that the allegation of deliberate and mala fide intention on the part of the assessee to make a wrongful claim was far fetched. There were no circumstantial factors to suggest that the claim was intentional as the assessee company's case being in the higher income group generally gets selected for scrutiny year after year. Thus, it cannot be said that the assessee was hoping to get away with such blatantly wrongful claim. The mere fact that the mistake had been pointed out by the Assessing Officer, during the assessment cannot mean that the claim itself at the time of filing of return was with the intention of deceiving the revenue. With these observations, the CIT(A) vide order dated 27.01.2015, Annexure –III, deleted the penalty. Aggrieved by the order, the revenue filed appeal before the Tribunal. Vide order dated 28.10.2016, Annexure-IV, the Tribunal upheld the order passed by the CIT(A). Hence the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The CIT(A) observed that the circumstances clearly suggested that it was not intentional mistake because assessee's company is of higher income group and is generally selected for scrutiny assessment. Reliance was placed on the judgment of the Apex Court in ***Price Waterhouse Coopers Pvt. Ltd Vs. Commissioner of Income Tax*** (2012) 348 ITR 306, wherein it was held that the imposition of penalty on the assessee was not justified since the assessee had committed inadvertent bonafide error and it was not intended to or attempted to either conceal its income or furnish inaccurate particulars. Further, it has been recorded by the Tribunal after examining the entire evidence on record that the assessee on realizing the mistake that sundry debtors written off had not been added in the computation of total income, submitted before the Assessing Officer to make the addition of the same amount in the computation of income for the year

under consideration. The assessee, thus, offered explanation to the Assessing Officer. It was further noticed that the amount of sundry balances written off had already been added back in the computation of income of Baddi Unit of the assessee company on which deduction under Section 80IC of the Act had been claimed. The assessee explained that due to inadvertent mistake, the same was omitted to be added back in the computation of its income. Thus, the Tribunal concurred with the findings recorded by the CIT(A) and dismissed the appeal filed by the revenue. The relevant findings recorded by the Tribunal in this regard read thus:-

“We have considered rival submissions and material available on record. It is not in dispute that the amount of sundry balances written off was already added back in the computation of income of Baddi Unit on which deduction under Section 80IC of the Act have been claimed. The assessee explained that due to inadvertent mistake, same was omitted to be added back in the computation of income of the assessee company. It is, therefore, clear that assessee disclosed complete facts in the return of income as well as disclosed the relevant facts before Assessing Officer at the assessment stage. The assessee on realizing the mistake that sundry debtors written off have not been added in the computation of total income, submitted before Assessing Officer to make the addition of the same amount in the computation of income of the assessee for the year under consideration. The assessee has, thus, offered explanation to the same issue. The above facts proved that explanation of the assessee was bonafide and all the facts relating to the same and material to the computation of total income have been disclosed by the assessee. The Ld. CIT(Appeals), therefore, rightly noted that the circumstances clearly suggest that it was not intentional mistake because assessee’s company is of higher income group and generally selected for scrutiny assessment. Therefore, there was no reason to believe that assessee would evade the taxes. This is a mistake

in not adding back the sundry debtors written off in computation of income. It was added in the computation of income. It was added in the computation of income of Baddi Unit. The Ld. CIT(Appeals), therefore, correctly relied upon decision of Hon'ble Supreme Court in the case of ***Price Warehouse Coopers Pvt. Ltd*** (Supra) for the purpose of deleting the addition considering it to be a mistake in not adding back the amount in the computation of income.

7. Hon'ble Gujarat High Court in the case of ***CIT Vs. Union Electric Corporation*** 281 ITR 266 confirmed order of the Tribunal in deleting mistakes in accounts and requested disallowance. It was found that there is no concealment of income and penalty could not be levied. Hon'ble Madras High Court in the case of ***CIT Vs. Nellai Trading Automobile Agency*** 288 ITR 557, dismissed departmental appeal finding that under valuation of stock was due to mistake, therefore, penalty could not be imposed.

8. Considering the facts and circumstances of the case in the light of finding of fact recorded by the CIT (Appeals) we are of the view that Ld. CIT(Appeals) rightly cancelled the penalty under Section 271(1)(c) of the Act. We do not find any error in the order of Ld. CIT (Appeals) in cancelling the penalty.”

5. Learned counsel for the appellant-revenue has not been able to point out any error or perversity or misreading of evidence on record in the concurrent findings recorded by the CIT(A) as well as the Tribunal. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 21, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes
Yes