In the High Court of Judicature at Madras
Dated : 30.8.2018

Coram :
The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.141 of 2009

M/s.Sundaram Finance Ltd.,
Madurai-1.

(Cause title accepted
vide order dated 20.4.2006 in TCMP
No.1202 of 2005 by PSJ and JAKSJ) ...Appellant

Vs

The Deputy Commissioner of
Income Tax, Special Range II,
Madurai. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 28.1.2005 made in I.T.A.No.1848/Mds/1997 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'C' for the assessment year 1989-90 against the order of Commissioner of Income Tax (Appeal-1), Madurai dt.05/07/94. It Appeal No. 171/92-93 and against the order dt.31.5.94 in A.No.392/92-93/89-90 by the Commissioner of Income Tax (Appeal), Madurai and against the order dt.17.07.92 by the Deputy Commissioner of Income Tax, Special Range II, Madurai.

For Appellant : Mr.M.Venkata Narayanan for
M/s.Subbaraya Aiyer Padmanabhan

For Respondent : Mr.T.Ravikumar, SSC and
Mrs.R.Hemalatha, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the assessee has been directed against the order passed by the Income Tax Appellate Tribunal in ITA.No.1898/Mds/1997 dated 28.1.2005 for the assessment year 1989-90.

2. The appeal has been admitted on the following substantial question of law :

> "Whether the Appellate Tribunal was right in law in holding that the provisions of Section 271(1)(c) are attracted when the

assessee had voluntarily offered the income in good faith for taxation ?"

3. We have heard Mr.Venkata Narayanan, learned counsel appearing on behalf of the appellant and both the learned Senior Standing Counsel appearing for the Revenue.

4. The short issue, which falls for consideration in the instant case, is as to whether the levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was justified in the facts and circumstances of the case.

5. The assessee filed the return of income for the said assessment year and the return was processed under Section 143 (3) of the Act. While examining the return of income, the Assessing Officer pointed out that a sum of Rs.1,06,173/- has been debited to the profit and loss account under the head 'other expenses', which was included under 'administrative and other expenses' and the same was stated to have been incurred for land up-keep.

6. The Assessing Officer called for details from the assessee, who, on so being called for, admitted that the expenses were non business expenses and requested the Assessing Officer to disallow the same. Accordingly, the said sum was added to the income. Subsequently, a notice for levying penalty under Section 271(1)(c) of the Act was issued, for which, the assessee submitted a detailed reply dated 17.4.1992. The reply of the assessee was considered. However, the proposal in the show cause notice was confirmed and penalty was imposed.

7. The assessee carried the matter on appeal to the Commissioner of Income Tax (Appeal) [for brevity the CIT (A)], who confirmed the order passed by the Assessing Officer. Not stopped with that, the assessee filed an appeal before the Tribunal. The Tribunal, by the impugned order, confirmed the orders passed by both the CIT (A) as well as the Assessing Officer.

8. Admittedly, the expenses, which were included under the head 'other expenses' towards land up-keep, when pointed out by the Assessing Officer, to be justified, the assessee was unable to place any documents to substantiate the same. On the contrary, they accepted it as a non business expenditure. Accordingly, the same was added to the income.

9. However, it is to be seen as to whether this could be a reason for levying of penalty. The assessee, in their reply to the show cause notice issued under Section 271(1)(c) of the Act, contended that it was not a deliberate attempt or intentional attempt to conceal and that the omission was only by oversight.

10. The CIT (A) took note of the said stand taken by the assessee and the decision in the case of CIT Vs. Badri Prasad Om Prakash [reported in 163 ITR 440] and held that when a query is raised by the Assessing Officer and after the query is raised, the assessee accepts the same, it should be termed as a wilful omission.

11. Before the First Appellate Authority, the assessee appears to have set up a slightly different defence by contending that they offered to file the return, which request was not acceded to by the Assessing Officer. However, we find that there was no such stand taken before the Assessing Officer and that the stand taken for the first time before the CIT (A) had not been established. Because of the factual position, the CIT (A) rejected the appeal. Again on appeal by the assessee, this was confirmed by the Tribunal by taking note of the factual position that only after the Assessing Officer pointed out the same, the assessee agreed for the disallowance and added the amount to their income. On facts, we find that all the three Authorities below have concurrently held against the assessee.

12. The learned counsel appearing on behalf of the assessee has referred to the decision in the case of CIT Vs. Sri Saradha Textile Processors (P) Ltd. [reported in (2006) 286 ITR 0499].

13. However, we find that in the said case, the factual position was entirely different pertaining to the claim for depreciation and investment allowance wherein the Authorities concurrently held in favour of the assessee that the assessee had withdrawn the claim for depreciation and investment allowance on the machinery and filed revised return. The case on hand is not similar to that of Sri Saradha Textile Processors (P) Ltd. As observed by us earlier, the assessee attempted to set up a new case before the CIT (A) by stating that they wanted to file revised return. However, this was not established by the assessee. Therefore, the decision in Sri Saradha Textile Processors (P) Ltd., cannot be applied to the case of the assessee herein.

14. With regard to the decision in the case of Price Waterhouse Coopers Pvt. Ltd. Vs. CIT [reported in (2012) 348 ITR 0306], relied upon by the learned counsel appearing on behalf of the assessee, the legal principle laid down by the Hon'ble Supreme Court was that imposition of penalty would be unwarranted in a case where the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. The legal principle, as laid down in the case of Price Waterhouse Coopers Pvt. Ltd., if applied to the facts of the present case, we would have no option except to hold that the conduct of the assessee cannot be termed to be an inadvertent or bona fide error. Furthermore, this aspect, being a factual aspect and having been considered by both the Authorities below as well as the Tribunal, cannot be upset by this Court in an appeal filed by the assessee wherein the decision shall be on a substantial question of law. Therefore, this decision does not render much assistance to the case of the assessee.

15. Reliance is also placed by the learned counsel appearing on behalf of the assessee on the decision in the case of CIT Vs. Reliance Petroproducts (P) Ltd. [reported in (2010) 322 ITR

0158] wherein the ratio laid down in the said decision by the Hon'ble Supreme Court is that merely because the assessee claimed deduction of interest expenditure, which has not been accepted by the Revenue, penalty under Section 271(1)(c) of the Act is not attracted and that mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Had it been a case of an individual assessee or a person, who is engaged in manufacture or any other activity, we might have examined the case as to whether it would fall within the parameters as laid down in the decision in Reliance Petroproducts (P) Ltd.

16. We are unable to do so due to the fact that the assessee is a company engaged in financial services such as leasing and hire purchase finance and it is beyond one's apprehension that in their returns, they inadvertently included the sum incurred for land up-keep expenses and debited to the profit and loss account.

17. Mr.T.Ravikumar and Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue have placed reliance on the decision of the Hon'ble Supreme Court in the case of Mak Data P. Ltd. Vs. CIT [reported in (2013) 358 ITR 0593] wherein it has been held that voluntary disclosure/ surrender made in view of the deduction by the Assessing Officer in the search conducted does not release the assessee from the mischief of penalty proceedings.

18. Reliance is also placed by the learned Senior Standing Counsel for the Revenue on the decision of the Division Bench of this Court in the case of CRN Investments (P) Ltd. Vs. CIT [reported in (2008) 300 ITR 0342] wherein it has been held that the conduct of the assessee in withdrawing the unmerited deduction by filing a revised return subsequent to the survey under Section 133A of the Act was a case where penalty was leviable.

19. Reliance is also placed on the decision in the case of Lanxess India Pvt. Ltd. Vs. ACIT [reported in (2015) 373 ITR 0346] wherein the Division Bench of this Court held that by cogent and relatable evidence, the assessee should first show that there was neither concealment of particulars of income nor furnished inaccurate particulars of income in order to avoid penalty proceedings under Section 271(1)(c) of the Act.

20. Further reliance is placed by the learned Senior Standing Counsel for the Revenue on the decision in the case of CIT Vs. Zoom Communication (P) Ltd. [reported in (2010) 327 ITR 0510] wherein the Division Bench of the Delhi High Court held that the Tribunal committed an error in law in deleting the penalty under Section 271(1)(c) of the Act in respect of the claim on account of payment of income tax and capital expenditure written off in the profit and loss account of the assessee, the claim, besides being incorrect in law, was mala fide.

21. There is nothing on record to show that the inclusion of the said sum under the head 'administrative and other expenses' was an inadvertent error. Furthermore, the assessee was unable to substantiate their stand before the CIT (A) that there was an attempt to file revised returns. Thus, the Authorities below as well as the Tribunal rightly came to the conclusion, on the facts and in the circumstances of the case, that penalty was leviable on the assessee.

22. In the result, the above tax case appeal is dismissed by answering the substantial question of law framed against the assessee and in favour of the Revenue. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
  Chennai 'C' Bench.
2.The Deputy Commissioner of Income Tax,
  Special Range II, Madurai.
3.The Commissioner of Income Tax(Appeal-I)
  Madurai.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.59718

TCA.No.141 of 2009

SJ(CO)

rrs 24/09/2018.