IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 93 of 2016

Date of Decision: 11.07.2018

The Pr.Commissioner of Income Tax-II, Chandigarh ....Appellant

Versus

Sh. Ramesh Kumar Dudani ......Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mrs. Urvashi Dhugga, Senior Standing counsel for the appellant-revenue.

Mrs. Radhika Suri, Senior Advocate with Mr. Manpreet Singh Kanda, Advocate for the respondent.

AVNEESH JHINGAN, J.

The present appeal has been preferred by the Revenue Authority under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 26.10.2015 (Annexure A6) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter refereed to as the Tribunal). The Tribunal upheld the order of CIT(A) quashing penalty of Rs.25,24,868/- imposed under Section 271(1)(c) of the Act relating to the assessment year 2009-10.

The brief facts of the case are that in the assessment proceedings for the assessment year 2009-10 power was exercised under Section 80IA(10) of the Act and certain expenses were reallocated between two units of the respondent namely Theog unit and Mohali Unit. The penalty proceedings under Section 271(1)(c) of the Act were initiated. The main contention of the assessee before the Assessing Officer was that the additions were made on mere estimates and therefore, penalty was not leviable. The Assessing Officer did not find merit in the assessee's submissions and imposed a minimum penalty of Rs.25,24,868/-. The said penalty was quashed by learned CIT(A) vide order dated 20.4.2015 against which an appeal was filed by the Revenue before ITAT, Chandigarh. The same was dismissed vide order dated 26.10.2015 impugned herein.

The appellant claims that the following question of law arise for consideration in the appeal:

> "Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in deleting the penalty of Rs.25,24,868/- *(wrongly typed as Rs.20,02,673/-*) levied by the AO in respect of addition of Rs.58,91,946/- made on account of re-allocation of booking of expenses of exempt unit which the assessee has claimed against non-exempt unit resulting in misuse of provisions of Section 80-IC of the Act read with section 80IA(10)?"

We have heard learned counsel for the parties and perused the paper book.

Since the quantum appeals against the assessment orders have been remanded back to the Assessing Officer (A.O.) for decision afresh vide separate order of even date, accordingly. The impugned orders in the instant appeal are also set aside and the issue of penalty is also remitted back to the A.O. to pass fresh order after adjudicating the quantum proceedings in accordance with law.

The appeal stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

11.07.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No