

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 03.04.2018
Pronounced on: 09.07.2018

+ **ITA 43/2017**

PR. CIT-8

..... Appellant

Through: Sh. Zoheb Hossain, Sr. Standing Counsel with
Sh. Deepak Anand, Jr. Standing Counsel.

versus

SAMTEL INDIA LTD.

..... Respondent

Through: Ms. Kavita Jha and Sh. Vaibhav Kulkarni,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. The following question of law arises in the revenue's appeal, under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act'):

"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the assessee/respondent was not liable to penalty to the tune of ₹1,02,53,238/- under Section 271(l)(c) of the Income Tax Act, 1961 in the circumstances of the case?"

2. The relevant facts are that the assessee company was primarily engaged in manufacturing of 'black and white' ("B&W" hereafter) picture

tubes for use in televisions. As the market for black and white televisions declined sharply in the year 1995-96 the assessee was forced to shut down the manufacture of B&W picture tubes in financial year 2005-06. During the Financial Year 2007-08, in order to continue in the business, the assessee company decided to set up another project for manufacture of 'metal parts' for which the company purchased some machinery to the tune of ₹3.34 crores. The Company was unable to mobilize funds for the machinery and as a result the machinery could not be removed from the port.

3. During the year under 2008-09 the financial position of the company worsened further and finally, the assessee company dropped the idea of putting up the new project. Accordingly, the management decided to write off the machinery so purchased after retaining estimated scrap value of the machinery in the books of account. The decision of the management to write off the project was disclosed in the Annual Accounts of the company, and was approved by the assessee's directors and shareholders in the Annual General Meeting (AGM).

4. During the course of income tax assessment proceedings, it was submitted by the assessee that "the capital work in progress" was written off during the year as 'Metal Part Project' had become unviable. The machinery purchased for metal project had not been capitalized and was shown under the head 'Fixed Assets' as capital work in progress. No depreciation was ever claimed. Since the machine was not capitalized and had to be eventually written off, the assessee claimed the loss as a revenue loss. The Assessing Officer (AO) accepted that there was a loss but declined to accept it as a revenue loss. The assessee unsuccessfully approached the Commissioner of Income Tax (CIT) and the Income Tax Appellate Tribunal (ITAT); these

appellate authorities declined the assessee's plea that writing off these amounts was justified.

5. Subsequently penalty proceedings under Section 271(1)(c) of the Act were initiated on the issue of the writing off of capital work-in-progress, i.e. the subject matter of disallowance, which was taxed for the relevant assessment year. The AO issued notice dated 18.04.2012 fixing the date for hearing on 24.04.2012 which was received by the assessee on 24.04.2012 itself. By letter dated 27.04.2012, the assessee sought time for filing a reply but the AO proceeded to pass the penalty order without affording further time to the assessee and imposed a penalty of ₹1,02,53,238/- for making a wrong claim in the return of Income. Aggrieved, the assessee approached the Appellate Commissioner, who confirmed the penalty by holding that on the facts of the case it was clear that the claim was made by the assessee with an intention to reduce tax incidence. The assessee then approached the ITAT and challenged the penalty confirmation in the impugned order. The ITAT set aside the penalty order, relying on the decision in *CIT vs Reliance Petroproducts Pvt Ltd* [2010] 322 ITR 158. The ITAT accepted the assessee's claim that this writing off of amounts for capital works-in-progress was fully disclosed in the annual accounts of the company. The assessee also claimed that the company has disclosed the write off.

6. It is argued on behalf of the Revenue that the ITAT fell into error in holding that a claim for write off of loss by the assessee, of amounts which were never utilized or deployed could not have been permitted. It was argued that Section 271 (1) (c) is not concerned with intention, or *mens rea*, but rather with the claim, which may be inaccurate and but for scrutiny, could

not have been made at all. By putting forward an untenable claim, speculatively, in a manner of speaking, the assessee took a chance.

7. Section 271(1) (c) of the Income Tax Act, 1861 is reproduced below:

“Section 271

(1) If the Assessing Officer or the Principal Commissioner or Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person –

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty-

(i) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.”

8. A plain reading of the provision shows that the penalty under Section 271(1)(c) is levied only on an assessee who either “conceals” or if it/he/she “furnishes inaccurate particulars of his income”. At the outset it is necessary to mention that even though the AO did not decide the character of the loss occurred, he conceded to the fact that the company has indeed suffered a loss. The controversy arose because the assessee claimed the amount as written off by mentioning the same in the revenue expenditure which consequently reduced his tax incidence.

9. The question that needs to be answered is whether penalty is automatically levied when the assessee makes a claim of write off which consequently reduces the tax incidence to be borne by the assessee. *Shri T. Ashok Pai v. Commissioner of Income Tax, Bangalore* [(2007) 7 SCC 162],

held that penalty can only be levied in a case where the essentials of section 271(1)(c) are met. Quoting from a previous authority, the Supreme Court held that:

“It is implicit in the word 'concealed' that there has been a deliberate act on the part of the assessee. The meaning of the word 'concealment' as found in Shorter Oxford English Dictionary, third edition, Volume I, is as follows: 'In law, the intentional suppression of truth or fact known, to the injury or prejudice of another.' The word 'concealment' inherently carried with it the element of mens rea. Therefore, the mere fact that some figure or some particulars have been disclosed by itself, even if it takes out the case from the purview of non-disclosure, it cannot by itself, even if it takes out the case from the purview of non-disclosure, it cannot by itself take out the case from the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of tax thereon. In order that a penalty under Section 271 (1) (iii) may be imposed, it has to be proved that the assessee has consciously made the concealment or furnished inaccurate particulars of his income.”

10. The court also emphasized that the provision of the Act is penal, and not akin to those in statutes that impose strict liability; consequently, the Revenue has the responsibility of establishing intentional wrong-doing. It was further held that the conditions under Section 271(1) (c) must exist before the penalty is imposed. Thus, the penalty under section 271(1) (c) is not automatic in nature.

11. A glance at the Section 271(1)(c) presents two essentials - “concealment” and “furnishing inaccurate particulars of income”. The current appeal is, however, only concerned with the interpretation of the phrase “furnishing inaccurate particulars of income.” The Revenue claims that by furnishing a wrong claim the assessee has “furnished inaccurate particulars of income.” The meaning of the phrase “furnishing inaccurate particulars of income” was explained by the Supreme Court in the case of *Commissioner of Income Tax vs Reliance Petroproducts Pvt Ltd* [(2010)322 ITR 158] by bifurcating “particulars” and “inaccurate” where particular was explained to include *the details of a claim, or the separate items of an account*. The word “inaccurate” was explained as *“not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript.”* When these words are read in conjunction with each other then it may seem that the details supplied in the Return are *not accurate, not exact or correct, not according to truth or erroneous*. No doubt, the effect of that judgment has been explained in a later decision; yet its emphasis on the literal interpretation of the word “inaccurate” has not been diluted.

12. From the facts of this case it is clear that the assessee disclosed all the particulars of his income. The AO has disallowed his claim without holding it to be bogus or false. Hence, the genuineness of the loss occurred is not at question here. The Supreme Court while elaborating the scope of section 271(1)(c) in *CIT vs Reliance Petroproducts Pvt Ltd* [2010] 322 ITR 158 held that-

“A glance of provision of section 271(l) (c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his

income. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. [Para 7]”

Similarly, in the present scenario, the assessee cannot be penalized for making a claim which in itself is unsustainable in law. The Supreme Court further held in the *Reliance Petrochemicals* case that-

“Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract the penalty under section 271(1) (c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under section 271(1)(c).”

13. The intention of the Parliament cannot be taken to have been to penalize everyone who makes a wrong claim for deduction. The legislature does not intend to penalize every person whose claim is disallowed. This is not the aim of the legislature. The Tribunal in the facts of this case, therefore, correctly reached this conclusion. The question of law is answered

in favour of the assessee and against the Revenue; therefore, the appeal has no merit and is dismissed.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JULY 09, 2018

