

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

**ITA No. 242 of 2018
Date of decision: 29.01.2019**

Pr. Commissioner of Income Tax, Panchkula

.....Appellant

Vs.

M/s Virgo Industries, 129, Sector-10, Panchkula

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Yogesh Putney, Senior Standing Counsel
for the appellant-revenue.

Ajay Kumar Mittal,(J).

1. This order shall dispose of ITA Nos. 225 & 242 of 2018 as according to learned counsel for the revenue, they involve identical issues. The facts are being extracted from ITA No. 242 of 2018.

2. The appellant-revenue has filed ITA No. 242 of 2018 under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 12.02.2018, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh Benches 'B', Chandigarh (in short, "the Tribunal") in I.T.A. No.1498/CHD/2017, claiming following substantial questions of law:-

“(i) Whether on the facts and in the circumstance of the case, the Ld. ITAT is right in law in holding that the claim made by the Assessee for deduction under Section 80IC of the Income Tax Act, 1961 @ 100% instead of 25% for the year under consideration i.e. 8th year on account of substantial expansion to

the undertaking is bonafide and does not tantamount to furnishing of inaccurate particulars of income in respect of claim of deduction under Section 80IC of the Income Tax Act, 1961 within the meaning of Section 271(1)(c) of the Income Tax Act, 1961?

- ii) Whether on the facts and in the circumstance of the case, the Ld. ITAT is right in law in deleting the penalty under Section 271(1)(c) of the Income Tax Act, 1961 by holding that bonafide claim does not amount to furnishing of inaccurate particulars of income ignoring the aspect that the plea of bonafide is not available to the Assessee who is a firm and represented by a team of professionals at every stage of the proceedings?
- iii) Whether on the facts and in the circumstance of the case, the Ld. ITAT is right in law in holding that explanation furnished by the Assessee was bonafide within the ambit of Explanation-I to Section 271(1)(c) of the Income Tax Act, 1961?
- iv) Whether on the facts and in the circumstance of the case, the Ld. ITAT misdirected itself in misconstruing the provisions of the Section 271(1)(C) of the Income Tax Act, 1961 and grossly overlooked the material available on record resulting into delivering a perverse order contrary to the material on record?
- v) Whether on the facts and in the circumstance of the case, the Ld. ITAT is right in law in confirming the order of the Commissioner of Income Tax (Appeals), Panchkula in cancelling the penalty on the ground that the disclosures of false claim not admissible under the law does not amount to either furnishing of inaccurate particulars of income or concealment of income within the meaning of Section 271 (1) (c) of the Income Tax Act, 1961?
- vi) Whether on the facts and in the circumstance of the case, the Ld. ITAT is right in law in holding that penalty under Section 271 (1) (c) of the Income Tax Act, 1961 was not exigible ignoring that the Assessee concealed the particulars of income by furnishing inaccurate particulars of income by claiming the deduction at 100% instead of 25% which is allowable to him in-spice of knowing the fact that this is not allowable to him?

- vii) Whether on the facts and in the circumstance of the case, the Ld. ITAT is right in law in recording perverse findings contrary to material available on record in holding that the penalty under Section 271 (1) (c) of the Income Tax Act, 1961 was not leviable ignoring that the levy of penalty is a civil liability and provides remedy against loss of revenue that the Assessee concealed the particulars of income by furnishing inaccurate particulars of income?”

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee is a firm engaged in the business of Manufacturing of Laminates and Pre- Laminated Boards at Kalam Amb, District Sirmour, Himachal Pradesh. It filed its return of income on 30.09.2013 by declaring an income of ₹ 10,12,840/-. The case of respondent-assessee was selected for scrutiny. The statutory notice under Section 143(2) of the Act was issued on 01.09.2014. The case was transferred from the office of Income Tax Officer, Ward 1, Panchkula to the Assistant Commissioner of Income Tax, Panchkula Circle, Panchkula. Notice under Section 143(2) and 142(1) of the Act was issued on 27.05.2015 which was served upon the respondent-assessee on 03.06.2015. The Assessing Officer during the year under consideration noticed that the respondent-assessee had claimed deduction under Section 80IC of the Act @ 100% for the year under consideration which was 8th year. The claim of deduction at the rate of 100% was based on substantial expansion carried out by respondent-assessee during the financial year 2010-11 relevant to the assessment year 2011-12. The Assessing Officer issued detailed questionnaire on 19.06.2015 which was served on the assessee on 23.06.2015. In response thereto, the respondent-assessee furnished photocopy of bills for purchase of machinery during the financial year 2010-11 amounting to ₹ 3,22,16,771/- which was more than

50% of total book value of Plant & Machinery before taking depreciation as on 01.04.2011. The Assessing Officer afforded adequate opportunity to the assessee to substantiate its claim for 100% deduction under Section 80IC of the Act for the year under consideration being 8th year. The assessee except the bills/vouchers etc did not submit anything to substantiate its claim for deduction under Section 80IC of the Act at the rate of 100% in the 8th year. The Assessing Officer after examining the record noticed that the assessee initially commenced its commercial production in July, 2005 during the financial year 2005-06 relevant to the assessment year 2006-07 and had been claiming deduction under Section 80IC of the Act from the assessment year 2006-07 being first year of its operation at the rate of 100% of eligible profit for 5 years period up to assessment year 2010-11. The assessee submitted that after carrying out substantial expansion in the year under consideration by investing in Plant and Machinery more than 50% of gross block of Plant and Machinery as on 31.03.2010, the firm was eligible for deduction at the rate of 100% under Section 80IC of the Act in this year as well. The Assessing Officer examined the claim of assessee under Section 80IC of the Act and disallowed the same by restricting to 25% against the claim made at the rate of 100% and framed the assessment vide order dated 10.12.2015 passed under Section 143(3) of the Act. The Assessing Officer also initiated penalty proceedings under Section 271(1)(c) of the Act for wilfully furnishing inaccurate particulars of income under Section 80IC of the Act. The assessee carried the order dated 10.12.2015 before the Commissioner of Income Tax (Appeals) [CIT(A)] by filing an appeal. Vide order dated 29.07.2016, Annexure A.2, the CIT(A) dismissed the appeal and confirmed the disallowance. The assessee filed second appeal before the Tribunal. Vide order dated 20.12.2016, Annexure A.3, the Tribunal dismissed the appeal. Still further, the assessee

challenged the order dated 20.12.2016 passed by the Tribunal before this Court by filing appeal under Section 260A of the Act bearing No. ITA No. 253 of 2017. The Assessing Officer imposed the penalty amounting to ₹ 3,96,41,212/- upon the respondent-assessee under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income as the respondent-assessee failed to furnish any explanation with regard to concealment of income and furnishing of inaccurate particulars of income. The assessee filed an appeal before the CIT(A). Vide order dated 29.08.2017, Annexure A.5, the appeal was allowed and penalty was deleted holding that a mere claim of deduction which was not accepted or acceptable to the revenue by itself would not attract the penalty under Section 271(1)(c) of the Act. The revenue challenged the order passed by CIT(A) before the Tribunal. Vide order dated 12.02.2018, Annexure A.6 passed by the Tribunal, the appeal filed by the revenue was dismissed holding that the assessee was under bonafide belief and claimed deduction under Section 80IC of the Act. Reliance was placed by the Tribunal on the decision rendered by Himachal Pradesh High Court in the case of *M/s Stovekraft India Vs. CIT* [2018] 400 ITR 225 (HP), wherein it was held that deduction under Section 80IC of the Act was allowable on account of substantial expansion of the unit. Hence the instant appeals by revenue.

4. We have heard the learned counsel for the parties.

5. Admittedly, the assessee claimed deduction under Section 80IC of the Act at the rate of 100% on account of substantial expansion of the unit. The Assessing Officer denied the claim observing that the assessee had once availed the deduction under Section 80IC of the Act at the time of establishment of the unit and, thus, was not entitled to 100% deduction subsequently on account of substantial expansion. The Assessing Officer also

initiated penalty proceedings and levied penalty under Section 271(1)(c) of the Act on account of wrongful claim of deduction on this issue. The CIT(A) on appeal by the assessee deleted the penalty holding that it was not a case of furnishing of inaccurate particulars of income or concealment of income which was the pre-condition for levy of penalty under Section 271(1)(c) of the Act. Aggrieved by the order, the revenue went in appeal before the Tribunal. Relying upon the decision rendered by the High Court of Himachal Pradesh in ***M/s Stovekraft India's*** case (supra), it was recorded by the Tribunal that under the provisions of the Act, the assessee was entitled to claim deduction under Section 80IC of the Act on account of substantial expansion of the unit. Even otherwise, this was not a case of furnishing of inaccurate particulars of income or concealment of income. Further, it was recorded that the assessee under the bonafide belief had claimed the deduction under Section 80IC of the Act. Thus, no infirmity was found in the order passed by the CIT(A) in deleting the penalty. The relevant findings recorded by the Tribunal in this regard read thus:-

“We have considered the rival submissions. At the outset, Shri. Manoj Kumar Ld. Representatives of the assessee has submitted that even the issue on merits regarding allowability of claim of deduction under Section 80IC of the Act at the rate 100% on account of substantial expansion of the unit, has been settled by the Hon'ble Jurisdictional High Court of Himachal Pradesh vide their order dated 28.11.2017 in the group of cases with the head case titled as ***M/s Stovekraft India Vs. CIT***, ITA No. 20 of 2015 wherein the Hon'ble High Court has held that the assessee as per the provisions of the Act is entitled to claim deduction under Section 80IC of the Act on account of substantial expansion of the unit. Even otherwise, we do not find that this is a case of furnishing of inaccurate particulars of income or concealment of income. The assessee under the bonafide belief claimed the

deduction under Section 80IC of the Act and even such claim of deduction under Section 80IC has been found to be correct in the ease of other assessee by jurisdictional high Court of Himachal Pradesh, as observed above.

5. In view of this, we do not find any infirmity in the order of the Ld. CIT(A) in deleting the aforesaid penalty in both the appeals. There is no merit in the appeals of the revenue and the same are hereby dismissed.”

6. Learned counsel for the appellant-revenue has not been able to point out any error or illegality in the findings recorded by the Tribunal that the claim of deduction @ 100% for the year under consideration by the assessee was on account of bonafide belief of the assessee and not on account of furnishing of any inaccurate particular or concealment of income, thus, warranting interference by this Court. No substantial question of law arises. Consequently, both the appeals are hereby dismissed.

(Ajay Kumar Mittal)
Judge

January 29, 2019
'gs'

(Harnaresh Singh Gill)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes