

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.599 of 2017

Principal Commissioner of Income Tax I,
No.63, Race course Road,
Coimbatore

... Appellant

vs.

M/s. Core Carbons Pvt Ltd,
91, Krishna Colony,
Singanallur, Coimbatore - 641 005.

... Respondent

Prayer :- Appeal filed against the order of the Income Tax Appellate Tribunal, Madras C Bench, dated 20 April 2017 in ITA No.1378/Mds/2015.

Appeal filed against the order of the Income Tax Appeal Tribunal 'Madras' C Bench, dated 20/04/2017 in the Commissioner of Income Tax (Appeals)-I, Coimbatore dated 20/03/2015, Appeal No. 237/11-15 PAN No.AABCC 2663B Assessment Year 2011-2012 against Deputy Commissioner of Income Tax, company, Circle I (3), Coimbatore PAN.No.AAABC2663B Assessment Year 2011-2012 against the Additional Commissioner of Income Tax, Range I, Coimbatore Pan.No.AABCC 2663B Assessment Year 2011-2012.

For appellant : Mr.T.R.Senthil Kumar

For respondent : Mr.S.Sridhar

ORDER

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. The Revenue has filed this appeal under Section 260A of the Income Tax Act, raising the following purported substantial questions of law for our consideration :-

1. Whether the Appellate Tribunal is correct in deleting the penalty levied u/s 271(I)(c) without considering that "Mens

rea" is apparent in this case?

2. Whether the Tribunal is correct in deleting the Penalty relying on the earlier decision [2010] of the Supreme Court in the case of Reliance Petro Products vs CIT when latter [2013] judgement of the Supreme Court in the case of MAK Data P Ltd Vs CIT had clearly held that "Voluntary disclosure does not release assessee from mischief of penal proceedings under section 271(I)(c)"?

3. The Tribunal, while deleting the penalty under Section 271 (1)(c) of the Act, and upholding the order of the First Appellate Authority, viz., Commissioner of Income Tax Appeals, has given the following reasons in paragraphs 10 and 11 of its order dated 20 April 2017. The said paragraphs are quoted below for ready reference :-

10. We have carefully gone through the judgment of Apex Court in Reliance Petroproducts (P) Ltd. (supra). In the case before Apex Court, the assessee-company claimed interest expenditure as deduction. However, the Assessing Officer disallowed the claim of the assessee and made addition. The assessee claimed interest expenditure on the loan borrowed by it for purchasing some IPL shares. The assessee did not earn any income by way of dividend from those shares. The assessee claimed disallowance of expenditure under Section 14A of the Act. The assessee explained before the Assessing Officer that entire details were given in writing and there was no concealment of income nor any inaccurate particulars of such income were furnished. In those factual circumstances, the Apex Court held that mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to inaccurate particulars.

11. Moreover, there was a real confusion as stated above in view of extension of Sunset Clause and amendment made in Finance Act, 2008 and 2009. Therefore, the claim made by the assessee being a bona fide one, this Tribunal is of

the considered opinion that the CIT (Appeals) has rightly deleted the penalty levied, by the Assessing Officer. As found by the Apex Court in Reliance Petroproducts (P.) Ltd. (supra), mere making a claim under Section 10B of the Act after furnishing all the particulars of income, cannot be a reason for concluding that the assessee has furnished inaccurate particulars or concealed any part of income. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

4. The learned counsel for the appellant/Revenue, Mr.T.R.Senthil Kumar vehemently submitted before us that the Assessee deliberately made the claim under Section 10B of the Act for deduction of its 100% export income, it being a 100% EOU beyond the Sunset year of AY 2010-11 and AY 2011-12 involved in the present case. He therefore submitted that the Assessee clearly had mens rea or wrong intention to avail the benefit of exemption under Section 10B of the Act beyond its eligibility up to the AY 2009-10. He pointed out the circular No.1/2005 was issued way back in the year 2005 itself, which made it clear that the claim of the 100% EOU will also expire after the balance period of their becoming 100% EOU. He therefore submitted that there was no reason at all for the Assessee to claim this exemption for two Assessment Years beyond AY 2009-10 up to which year only the Assessee was entitled to avail the benefits.

5. On the other hand, Mr.Sridhar, learned counsel for the respondent Assessee submitted that there was a bona fide confusion in the mind of the Assessee on account of the statement of Union Finance Minister made on the floor of the Parliament, extending the Sunset clause for this exemption for 100% Export Oriented Units up to the year 2015. However, he fairly conceded that when the Assessing Authority initiated action to deny such exemption for the AY 2011-12, in the present Assessment year, the Assessee not only withdrew his claim for exemption under Section 10B of the Act for the AY 2011-12 but also for the previous Assessment year AY 2010-11, by filing appropriate rectification application under Section 154 of the Act. He therefore submitted that the fact remains that the Assessee has not availed any exemption under Section 10B of the Act beyond AY 2009-10, in the present case. He submitted that there was no mens rea, or ill intention on the part of the Assessee in initially making a claim under the bona fide confusion but withdrew the same immediately upon being made aware of the correct legal position, by initiation of the proceedings by the Assessing Authority. He submitted

that the Hon'ble Supreme Court in the case of CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158, which has been relied upon by the Tribunal for setting aside the penalty under Section 271(1)(c) of the Act, is applicable to the facts of the case and therefore, he submitted that no substantial question of law arises in the present appeal filed by the Revenue and this Court could not restore the penalty under Section 271(1)(c) of the Act, in the facts and circumstances of the case, where the Assessee, as 100% Export Oriented Unit, made an inadvertent claim under Section 10B of the Act for these two assessment years, which he immediately withdrew upon being made aware of the correct legal position in the light of the CBDT circular of the year 2005 and the proceedings undertaken by the Assessing Authority for the Assessment year 2011-12.

6. Having heard the learned counsel for the parties, we are of the opinion that no substantial questions of law arises in the present appeal filed by the Revenue. The considerations for imposition of penalty under section 271(1)(c) of the Act are different and same parameters, which are applicable for imposition of tax on the Assessee, cannot be applied while considering the cases of penalty, especially for penalty for concealment and filing of inaccurate particulars under section 271(1)(c) of the Act.

7. It is true that the assessee made a claim under section 10B of the Act for two of his assessment years, namely AY 2010-11 and AY 2011-12 wrongly, to which it was not entitled. But, the fact is undisputed that the Assessee has not really gone away with this exemption claim finally, upon the assessment. He has withdrawn his claim for the previous assessment year 2010-11 even by invoking the rectification jurisdiction under section 154 of the Act, and for the present assessment year 2011-12 also, he has withdrawn his claim before the assessing authority itself. Therefore, the only mistake, which is rather inadvertent on the part of the Assessee, is to make a claim under section 10B of the Act, but he has finally withdrawn the same. The fact remains that there has been no revenue loss or loss of tax to the department in the present case.

8. We are of the considered opinion that the imposition of penalty and realisation thereof is not a regular source of income for the Income Tax Department. It is only the justifiably imposition of tax which is intended to be recovered and unless there is a mens rea or a guilty animus on the part of the Assessee, the penalty under section 271(1)(c) of the Act is an exception rather than a rule.

9. In these circumstances, where the two regular appellate authorities have granted the relief to the Assessee by deleting the penalty imposed by the Assessing Authority under section 271(1)(c) of the Act, we don't think that it is

a fit case for re-imposition thereof, by allowing the appeal of the Department before us under section 260A of the Act, which lies only on the substantial questions of law arising from the order of the learned Tribunal.

10. We do not find any substantial question of law arising in the present case and the imposition of penalty, always being a quasi judicial exercise at the discretion of the competent authorities, cannot give rise to any substantial question of law.

11. We are, therefore, not inclined to entertain the present appeal of the Revenue under section 260A of the Act and we dismiss the same with no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl/tar

To

- 1.The Income Tax Appellate Tribunal,
Madras C Bench.
- 2.The Commissioner of Income Tax (Appeals)-1,
Coimbatore.
- 3.Deputy Commissioner of Income Tax Company Circle (3),
Coimbatore.

T.C.A.No.599 of 2017

VSN II (CO)

GN (24/09/2020)

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