IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 346 of 2019
Date of decision: 10.2.2020

Principal Commissioner of Income Tax, Faridabad
.. Appellant

v.

M/s Piyush Buildwell India Ltd.
.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tajender K. Joshi, Senior Panel Counsel with
Mr. Vikram Bali, Junior Panel Counsel for the appellant.

...

AVNEESH JHINGAN, J.

The revenue is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 28.12.2018 passed by the Income Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') claiming following substantial questions of law:

"(i) On the facts and in the circumstances of the case the Ld. ITAT has erred on facts and in law by upholding the decision of Ld. CIT (A) and in deleting the penalty of Rs. 2,94,64,260/- levied by the Assessing Officer u/s 271(1)(c) of the Act by holding that the impugned penalty is pre-mature and hence unable to sustain the same?

(ii) On the facts and in the circumstances of the case the Ld. ITAT has erred on facts and in law by upholding the decision of Ld. CIT (A) and in deleting the penalty levied by holding that the Assessing Officer has erred in levying penalty on entire amount of disallowance as was originally disallowed by Assessing Officer when the Ld. CIT(A) had held that assessee was eligible for proportionate deduction especially when no quantum of proportionate deduction were quantified while deciding the appeal.

(iii) On the facts and in the circumstances of the case the Ld. ITAT has erred in deleting the penalty when it is a matter of claim of exemption or deduction under the Act, a heavy onus is placed on assessee. By claiming inaccurate deduction to reduce the tax liability tantamounts to furnishing inaccurate particulars of income.

(iv) On the facts and in the circumstances of the case Ld. ITAT has erred on facts and in law in deleting the penalty especially without going into the Explanation 5A(ii) to Section 271(1)(c) of the Act?"

The relevant facts are that the assessment year involved is 2008-09. A search and seizure was conducted at the administrative office of Piyush Group of Companies and the residential premises of the Director were also searched on 16.1.2008. In proceedings under Section 153A of the Act, vide order dated 29.12.2009 addition of ₹8,66,85,809/- was made by disallowing the claim of the assessee made under Section 80IB of the Act. Further, an addition of ₹1,84,32,854/- was made by disallowing other expenses. In the appeal filed, the 1st Appellate Authority remanded the matter back holding that the assessee was eligible for proportionate deduction under Section 80IB of the Act taking into consideration the residential unit having area less than 1000 square feet. The Assessing Officer was to verify the factual position, however due to non-verification, the addition was sustained by the Assessing Officer. Penalty of ₹2,94,64,260/- under Section 271(1)(c) of the Act was imposed on 30.3.2012 for the amount of deductions disallowed. In the appeal, the 1st Appellate Authority deleted the penalty on 31.3.2015. The appeal of the revenue was dismissed by the Tribunal, hence the present appeal.

Learned counsel for the revenue argued that the 1st Appellate Authority erred in setting aside the penalty as the partial addition was sustained and hence the penalty qua the same was leviable.

The contention raised lacks merit. The claim of the assessee under Section 80IB of the Act was rejected by holding that the flats were situated within 25 kilometers from municipal limits of Delhi and the built up area was more than 1000 square feet. The said order was set aside and the matter was remitted back for allowing proportionate deduction vis-a-vis the residential unit having less than 1000 square feet area. It was only as a result of non-verification of the factual aspect that addition was again made. The assessee had disclosed the particulars and the deduction was claimed in the return. It is also not disputed that there were details before the Assessing Officer to prove that the assessee had constructed two bed room units.

In view of the findings recorded by the authorities, the dispute boiled down that the assessee was entitled to proportionate deduction under Section 80IB of the Act, whereas he had claimed full deduction. Even though ultimately due to non-verification of the factual aspect the proportionate relief could not be given by the Assessing Officer.

The present case does not fall within the ambit of Section 271 (1)(c) of the Act. The claiming of deduction which ultimately was not sustainable will not itself amount to furnishing of inaccurate particulars.

The Supreme Court in **C.I.T. Ahmedabad v. Reliance Petroproducts, 2010 (322) ITR 158** dealt with Section 271(1)(c) of the Act and held as under:

> “7. ....A glance at this provision 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. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing

inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are lain 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 inaccurate particulars. In ***Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589]***, where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in ***Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369]***, as also, the decision in ***Union of India Vs.Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448]*** and reiterated in para 13 that:-

> "13. It goes without saying that for applicability of Section 271(1)(c) conditions stated therein must exist."

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9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In

Webster's Dictionary, the word "inaccurate" has been defined as:-

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the 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 the inaccurate particulars."

In view of the facts of the case and considering the decision cited above, no interference is warranted in deletion of penalty.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

10.2.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No