IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**Date of decision: 11.09.2023**

1. **ITA No.283 of 2014 (O&M)**

Commissioner of Income Tax (Central), Gurgaon

…Appellant

Vs.

M/s Bhushan Power & Steel Ltd.

…Respondent

2. **ITA No.270 of 2014 (O&M)**

Commissioner of Income Tax (Central), Gurgaon

…Appellant

Vs.

M/s Bhushan Power & Steel Ltd.

…Respondent

3. **ITA No.276 of 2014 (O&M)**

Commissioner of Income Tax (Central), Gurgaon

…Appellant

Vs.

M/s Bhushan Power & Steel Ltd.

…Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**
**HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Vaibhav Gupta, Junior Standing Counsel,
for the appellant(s).

Ms. Radhika Suri, Senior Advocate,
with Mr. Abhinav Narang, Advocate,
for the respondent(s).

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Ritu Bahri, J.

1. This judgment shall dispose of ITA Nos. 283, 270 and 276 of 2014 together as common questions of law and facts are involved in all the appeals. For reference, facts are being taken from ITA No.283 of 2014.

2. The instant appeal (ITA No.283-2014) under Section 260-A of the Income Tax Act, 1961, has been filed against the order dated 28.01.2014 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Chandigarh, whereby appeal filed by the Revenue against the order dated 14.01.2013 passed by the Commissioner of Income Tax (Appeal) (Central), Gurgaon, relating to the assessment year 2007-2008, has been dismissed.

3. Respondent-assessee (M/s Bhushan Power & Steel Ltd.) had set up a new unit at Hoogly, District Kolkata. The said unit started its commercial production on 13.05.2000. In terms of Section 41 of the West Bengal Sales Tax Act, the unit was allowed remission of Sales Tax for a period of 12 years upto 100% of Gross capital investment. The West Bengal Government, with a view to encourage entrepreneurs to set up new units and also to attract the existing units for expansion, had framed a scheme called 'West Bengal Incentive Scheme, 1993.' In terms of the said scheme, the assessee company was issued the eligibility certificate vide letter dated 31.12.1998 issued by the Government of West Bengal. As per the said certificate, the assessee company was entitled to sale tax remission for 12 years upto 100% of fixed capital investment.

4. The respondent-assessee filed return of income for the assessment year 2007-2008 on 30.10.2007 declaring total income of Rs.1,40,65,763/-. The assessee had claimed deduction of Rs.32,65,57,714/- on account of "Sales Tax exemption in the nature of capital subsidy." The

assessee also placed reliance on CBDT circular No.142 dated 01.01.1974 explaining taxability or otherwise of subsidy. The Deputy Commissioner of Income Tax, Central Circle-1, Chandigarh, by referring to the decision given by this Court in ***Commissioner of Income Tax-1 vs. M/s Abhishek Industries***, ITR 286 ITR 1 (P&H), held that the incentive in the form of sale tax exemption, was a revenue receipt. In this backdrop, vide order dated 30.03.2012 (Annexure A-2), sale tax exemptions of Rs.32,65,57,714/- were held to be a revenue receipt of the assessee company and addition was made to the total income of the assessee. Thereafter, penalty of Rs.10,99,19,325/- was imposed upon the assessee under Section 271 (1) (c) of the Income Tax Act and show cause notice was issued to the assessee. Against this order, the assessee filed an appeal before the Commissioner of Income Tax (Central) (A), Gurgaon, which was allowed vide order dated 14.01.2013 (Annexure A-3). While allowing the appeal, it was observed that as per Section 271 (1) (C) of the Income Tax Act, penalty is to be levied if, the assessee had concealed particulars of income or has furnished inaccurate particulars of such income. In the present case, the issue was, whether the sales tax exemption availed during the relevant year amounting to Rs.32,65,57,714/- as capital receipt, was to be held as revenue in nature. The Appellate Authority observed that the penalty for the assessment year 2005-2006 and 2006-2007 has been deleted by the CIT (Appeals). Reference was made to the judgment passed by Hon'ble the Supreme ***Court in CIT vs. Reliance Petroproducts Pvt. Ltd.*** 322 ITR 158, wherein it was held that mere making of a claim, which is not sustainable in law, by itself, would not amount to furnishing inaccurate particulars of income. The penalty levied under Section 271 (1) (c) in the case of ***M/s Abhishek Industries Ltd.'s*** case (supra) on the identical issue has already been deleted by the CIT (A)-1, Ludhiana, vide order dated 10.12.2010 passed in Appeal No.7-IT/10-11. In this backdrop, the appeal filed by the assessee (respondent herein) was allowed. Against the said order, the revenue preferred an appeal before the Income Tax Appellate Tribunal, Chandigarh, which was dismissed vide impugned order dated 28.01.2014 (Annexure A-4).

5. The Tribunal has dismissed the appeal as similar issue with regard to the sales tax subsidy for the assessment years 2005-2006 and 2006-2007 had already been decided in ITA Nos. 70 and 71/Chd/Chd/2012 vide order dated 25.09.2013 and penalty imposed upon the assessee had been deleted.

6. In the present case, learned counsel for the respondent has referred to the judgment passed by this Court in ***The Commissioner of Income Tax, Faridabad vs. M/s Amtek Auto Ltd.,*** ITA No.38 of 2010 (decided on 26.02.2013), wherein it has been held that merely for the reason that the assessee had claimed the expenditure to be revenue would not render the assessee liable to penalty proceedings. In ***Commissioner of Income Tax vs. Gurdaspur Co-operative Sugar Mills Ltd.,*** (2013) 354 ITR 27 (P&H), there was no dispute about the quantum of receipt of grant-in-aid from the State Government. The assessee had reflected the same as capital receipt, whereas it had been treated to be a revenue receipt. The Court observed that the issue, whether the amount of grant-in-aid was a capital receipt or a revenue receipt, was a debatable issue. In this backdrop, the penalty could not be imposed under Section 271 (1) (c) of the Act.

7. In the present case, it is not the case of appellant-revenue that against the earlier order dated 25.09.2013 passed in ITA Nos. 70 and

71/Chd/Chd/2012, any appeal has been filed before Hon'ble the Supreme Court. Since the said order has attained finality, no ground is made out to interfere in the impugned order. No substantial question of law arises for consideration in this appeal, as the main issue was only with respect to the interpretation, as to whether the subsidy taken by the respondent-assessee was to be treated as revenue or capital and this would not amount to non disclosure of any source of income, which would be liable for imposition of penalty.

8. Resultantly, finding no merits, the present appeals i.e. ITA No.283 of 2014, ITA No.270 of 2014 and ITA No.276 of 2014 are dismissed.

(RITU BAHRI)
JUDGE

(ALOK JAIN)
JUDGE

11.09.2023
ajp

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