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

\+ **ITA 899/2019**

THE PR. COMMISSIONER OF INCOME TAX -18 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC alongwith Ms. Pratishtha Chaudhary, Advocate

Versus

OIL INDUSTRY DEVELOPMENT BOARD ..... Respondent

Through: None.

12

\+ **ITA 905/2019**

THE PR. COMMISSIONER OF INCOME TAX -18 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC alongwith Ms. Pratishtha Chaudhary, Advocate

Versus

OIL INDUSTRY DEVELOPMENT BOARD ..... Respondent

Through: None.

13

\+ **ITA 907/2019**

THE PR. COMMISSIONER OF INCOME TAX -18 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC alongwith Ms. Pratishtha Chaudhary, Advocate

Versus

OIL INDUSTRY DEVELOPMENT BOARD ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **09.04.2024**

1. The Principal Commissioner of Income Tax impugns the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 04 April 2019 and has proposed the following questions for our consideration:-

> "2.1 Whether the ld. ITAT has erred both on facts and in law in deleting the penalty levied by the Assessing officer amounting to Rs.l,76,04,180/- under section 271(1)(c) for furnishing of inaccurate particulars of its income?
>
> 2.2 Whether the ld. ITAT has erred both on facts and in law in deleting the penalty levied by the Assessing officer which was affirmed by the first appellate authority i.e. ld. CIT(A)?
>
> 2.3 Whether the ld. ITAT has erred both on facts and in law in observing that the Assessee has bonafide belief in respect of claim under section 35(1) of the Act which is contrary to the facts mentioned by the Assessing officer and ld. CIT(A) as well and also conceded by the Assessee by not filing appeal in the matter?"

2. The solitary issue which appears to arise is the justification for levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961 ["**Act**"]. While dealing with the aforesaid aspect, the ITAT has observed as under:-

> "8. We have heard the rival submissions and perused the relevant material on record. The grants and contribution made by the assessee to various institution and deduction claimed thereon under section 36(1)(xii) was disallowed by the Assessing Officer, however, same was allowed by the Ld. CIT (A) and appeal filed by the Revenue against the said order has been dismissed by the Tribunal. The year wise claim under section 36(1) (xii) made by the Assessing Officer is reproduced as under:

Amount (in Rs.)

Particulars	**AY: 2005-06**	**AY: 2006-07**	**AY: 2007-08**
Contributions to Notified Institutions	209500000	220000000	149627200
Contribution/Grants to other Institutions	572000000	675100000	2256000000
Total	781500000	895100000	2405627200

9. The grants and contribution also included the notified institutions engaged in scientific research, on which, the assessee claimed weighted deduction under section 35(1) of the Act, i.e.125%. Out of this weighted deduction, the 25% portion was disallowed by the Assessing Officer, the year wise detail of which is reproduced as under:

Amount (in Rs.)

Particulars	**AY: 2005-06**	**AY: 2006-07**	**AY: 2007-08**
Contributions to Notified Institutions	209500000	220000000	149627200
Claim of the Assessee @ 125%	261875000	275000000	187034000
Disallowance under section 35(1)	52300000	55000000	37406800

10. Thus, it is evident that the disallowance made by the Assessing Officer under section 36(1)(xii) of the Act include hundred percent portion of the weighted deduction claimed by the assessee against the contributions made to the notified institution, which got deleted in the first appeal. The balance 25% portion of the weighted deduction was disallowed by the Assessing Officer under section 35(1) of the Act, which was not contested by the assessee in appeal in assessment year 2005-06 to 2006-07. In assessment year 2007-08 disallowance under section 35(1) and section 14A were contested by the assessee before the Ld. CIT(A),but not allowed in the appeal. The assessee, did not contest these issues in the Tribunal.

11. Thus, we find that the hundred percent claim of the grant to notified institution was allowed under section 36(1)(xii)but the balance 25% claimed under section 35(1) of the Act has not been allowed to the assessee.

12. In our opinion, it is settled position of the law that mere making of a claim, which is not sustainable in the law by itself will not amount to furnishing inaccurate particulars of income. The Hon'ble Supreme Court in the case of CITVs. Reliance Petro products Ltd 322 ITR 158 it is held that:

> *"Reading the words "inaccurate" and "particulars" in conjunction, the Apex Court opined that they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. 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 s. 271*(l)(c). 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. The assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. 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 s. 271(1)(l)(c).*

If the contention of the Revenue is accepted then in case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under s. 271(1) (c). That is clearly not the intendment of the legislature. The Tribunal, as well as, the CIT (A) and the High Court have correctly reached this conclusion. The decision Reliance Petroproducts (p) Ltd. (judgment dt. 23rd Oct, 2007 of the Gujarat High Court in Tax Appeal No. 1149 of 2007) was affirmed.

13. In the facts of the case, the details of the notified institutions was already made available while claiming deduction under secti6n 36 (l)(xii)of the Act and said claim has already been allowed by the Tribunal. The, only question is regarding the weighted claim of 25% under section 35(1) of the Act on the same grants made to notified institution, which has been allowed under section 36(1)(xii) of the Act. Thus, we cannot say that the claim under section 35(1) is based on any inaccurate particulars of income.

14. The Ld. CIT(A)has upheld the penalty only on the ground that assessee has failed to give any bonafide explanation in respect of the claim. We do not agree with the said finding of the Ld. CIT(A). The assessee has duly explained before the Assessing Officer the reasons as why the deduction under section 35(1) of the Act has been claimed, which have been also reiterated by us in the brief facts of the case. Accordingly, we set aside the finding of the Ld.CIT(A) on the issue in dispute and direct the Assessing Officer to delete the penalty in all the three assessment years under consideration. Accordingly, we allow the grounds raised in all the three appeals of the assessee."

3. Bearing in mind the aforesaid conclusions, we are of the considered opinion that no substantial questions of law arise.

4. The appeals consequently fail and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 9, 2024

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