

(2009) 11 P&H CK 0182

High Court Of Punjab And Haryana At Chandigarh

Case No: Income-tax Appeals No"s. 410 to 412 of 2009

Commissioner of
Income Tax

APPELLANT

Vs

Arisudana Spinning
Mills Ltd.

RESPONDENT

Date of Decision: Nov. 19, 2009

Acts Referred:

Income Tax Act, 1961 " Section 260A, 271(1), 80IA

Citation: (2009) 11 P&H CK 0182

Hon'ble Judges: Satish Kumar Mittal, J; Mehinder Singh Sullar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

This order shall dispose of three appeals bearing I. T. A. Nos. 410, 411 and 412 of 2009, filed by the revenue u/s

260A of the Income Tax Act, 1961 (hereinafter referred to as ""the Act""), which are arising from the common order dated 28-11-2008, passed by

the Income Tax Appellate Tribunal (hereinafter referred to as ""the ITAT"" in the case of the Assessee pertaining to three assessment years, i.e.,

2000-01, 1998-99 and 1997-98, respectively, whereby three appeals preferred by the revenue against the common order of the Commissioner

(Appeals) deleting the levy of penalty imposed upon the Assessee u/s 271(1) (c) of the Act, have been dismissed.

2. In the present case, the Assessee is engaged in the business of manufacturing of yarn and trading in wool. In its return of income, the Assessee

claimed deduction u/s 80-IA of the Act in respect of profits derived from trading turnover, i.e., trading in raw wool and knitted cloth. The return of

income filed by the Assessee was accompanied by the audited balance-sheet, profit and loss account and an audit report in Form No. 10CCB

relating to the claim of deduction u/s 80-IA of the Act. The assessing officer denied the said deduction to the Assessee while coming to the

conclusion that deduction u/s 80-IA was allowable only in respect of income derived from manufacturing of goods and not from trading in raw

wool and knitted cloth. The assessing officer also initiated penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of

income in its return with an intention to evade tax.

3. The order of the assessing officer not allowing the aforesaid deduction was set aside by the Commissioner (Appeals), but the Income Tax

Appellate Tribunal, while setting aside the order of the Commissioner (Appeals) confirmed the order of the assessing officer by relying upon the

decision dated 17-8-2006, given by this Court in Liberty India Vs. Commissioner of Income Tax, . After the decision of the Income Tax Appellate

Tribunal, the penalty proceedings were finalized and penalties (Rs. 1,50,000, Rs. 5,50,000 and Rs. 8,00,000) u/s 271(1)(c) of the Act were

imposed upon the Assessee. Aggrieved against the orders of penalties, the Assessee preferred appeals before the Commissioner (Appeals), who,

vide consolidated order dated 3-4-2008, deleted the penalties imposed u/s 271(1)(c) of the Act. Against the orders of the Commissioner

(Appeals), the revenue preferred appeals, which have been dismissed by the Income Tax Appellate Tribunal by a common order dated 28-11-

2008, while confirming the order of deletion of penalty passed by the Commissioner of Income Tax (Appeals). Against the said order, the revenue

filed the instant appeals raising the following substantial questions of law:

(i) Whether on the facts and in law the Income Tax Appellate Tribunal was justified in deleting the penalty u/s 271(1) (c) amounting to Rs. 1.50

lakhs imposed by the assessing officer ignoring the fact that the Assessee violated the provisions of Section 80-IA of the Income Tax Act, 1961,

which attracted penalty u/s 271(1)(c) of the Income Tax Act, 1961 ?

(ii) Whether on the facts and in law the Income Tax Appellate Tribunal was justified in deleting the penalty u/s 271(1)(c) amounting to Rs. 5.50

lakhs imposed by the assessing officer ignoring the fact that the Assessee violated the provisions of Section 80-IA of the Income Tax Act, 1961,

which attracted penalty u/s 271(1) (c) of the Incomertax Act, 1961 ?

(iii) Whether on the facts and in law the Income Tax Appellate Tribunal was justified in deleting the penalty u/s 271(1)(c) amounting to Rs. 8 lakhs

imposed by the assessing officer ignoring the fact that the Assessee violated the provisions of Section 80-IA of the Income Tax Act, 1961, which

attracted penalty u/s 271(1)(c) of the Income Tax Act, 1961 ?

4. We have heard the counsel for the Appellant and gone through the orders of the Income Tax Appellate Tribunal.

5. Learned Counsel for the Appellant argued that the Assessee patently made a wrong claim of deduction of profits earned from trading activities

u/s 80-IA of the Act, whereas it was not entitled for the said benefit as per the law laid down by this Court in Liberty India Vs. Commissioner of

Income Tax, which has been upheld by the Supreme Court in Liberty India Vs. Commissioner of Income Tax, . On these facts, the Assessee

could not justify the bona fide of the claim of deduction u/s 80-IA in its return of income. Learned Counsel further argued that the burden was on

the Assessee to prove that failure to return the correct income was for bona fide consideration, but the said burden was not discharged by the

Assessee. Learned Counsel argued that the observations made by the Commissioner (Appeals) that mens rea is required to be proved for levy of

such penalty, is contrary to the recent decision of the Supreme Court in Union of India (UOI) and Others Vs. Dharamendra Textile Processors

and Others, . Therefore, the Income Tax Appellate Tribunal was not justified in confirming the order of payment of penalty imposed u/s 271(1) (c)

of the Act.

6. After considering the submissions made by the learned Counsel for the Appellant, we do not find any merit in these appeals. In our opinion, the

Income Tax Appellate Tribunal has deleted the penalty imposed u/s 271(1)(c) on the Assessee after recording a finding of fact that the Assessee in

its return of income adequately disclosed all the relevant facts by accompanying the relevant documents. In this regard, the following finding has

been recorded by the Income Tax Appellate Tribunal:

... In this connection, a salient feature which is evident from the record is that the claim of the Assessee made in the return of income, though not

found acceptable, did not suffer from the vice of non-disclosure. We find that the return of income filed by the Assessee was accompanied by the

audited balance-sheet, profit and loss account and also an audit report in Form No. 10CCB relating to the claim of deduction u/s 80-IA of the

Act. Though the assessing officer has noted in the assessment order that the Assessee had not filed separate trading, profit and loss account for the

manufacturing and trading activities, yet the factum of the Assessee having claimed deduction u/s 80-IA was evident from the audit report in Form

No. 10CCB filed along with the return of income. In the assessment order there is no charge against the Assessee that it had not disclosed any

information or material required to compute the income for the year under consideration. Therefore, it would not be wrong to deduce that so far as

the claim of the Assessee for deduction u/s 80-IA was concerned, the same was adequately disclosed in the return of income and the

accompanying documents.

7. In view of the aforesaid finding, the Income Tax Appellate Tribunal while relying upon the decision of the Supreme Court in Sri T. Ashok Pai

Vs. Commissioner of Income Tax, Bangalore, , held that the penalty u/s 271(1)(c) was not allowable where the claim of the Assessee was based

on the report of the expert. Since the return of income was accompanied by the duly audited report required u/s 80-IA, the penalty cannot be

imposed, particularly when there is nothing on record to suggest that the report of the auditor was collusive.

8. The Income Tax Appellate Tribunal has further recorded a finding that the Assessee bona fide claimed the deduction u/s 80-IA with regard to

the profits from trading in raw wool and knitted cloth. In this regard, the following finding has been recorded by the Income Tax Appellate

Tribunal:

... Firstly, as noticed earlier, the claim of the Assessee was adequately disclosed in the return of income and the accompanying documents.

Secondly, the Assessee when called upon to justify the claim during the assessment proceedings, referred to the judgment of the Madras High

Court in the case of Commissioner of Income Tax Vs. Ashok Leyland Ltd., to contend that even with regard to the profit on sale of raw wool and

knitted cloth, it was eligible for deduction u/s 80-IA. In the case before the honble Madras High Court, the issue related to an Assessee which was

manufacturing automobile trucks, the profits from sale of imported spare parts to the purchasers of trucks for servicing the vehicles were sought to

be claimed as eligible for 80-I benefits. The honble High Court accepted the stand of the Assessee in that case. On the strength of the reasoning

adopted by the honble Madras High Court as above, the Assessee canvassed before the assessing officer that the profits in question were eligible

for Section 80-IA benefits. Though the subsequent development in the case of the Assessee shows that the said view has not found favour with the

Income Tax authorities, however, to say that the claim of the Assessee made in the return of income was fanciful or was completely untenable,

would be a misnomer. Therefore, in our considered opinion, the claim of the Assessee made in the return of income could be said to have rested

on a bona fide consideration.

9. The aforesaid finding of fact arrived at by the Income Tax Appellate Tribunal cannot be said to be perverse or against the material available on

the record. When the returns of income were filed, the issue with regard to entitlement of deduction u/s 80-IA on the profits derived from trading

turnover, i.e., trading in raw wool and knitted cloth, was debatable, and this issue was settled with the judgment of this Court in Liberty India Vs.

Commissioner of Income Tax, which has been upheld by the Supreme Court in Liberty India Vs. Commissioner of Income Tax, . Therefore, the

Income Tax Appellate Tribunal has rightly come to the conclusion that the Assessee did not deliberately or consciously conceal the true particulars

of income or furnished inaccurate particulars of income. The judgment cited, by the counsel for the Appellant is not applicable in the facts and

circumstances of the case, where the penalty has been deleted on the basis of the aforesaid finding of fact.

10. In view of the aforesaid finding of fact, in our opinion, no substantial question of law is arising out of the order of the Income Tax Appellate

Tribunal. Hence, these appeals are dismissed.