

(2014) 01 P&H CK 0305

High Court Of Punjab And Haryana At Chandigarh**Case No:** Income Tax Appeal No. 265 of 2013 (O and M)

Commissioner of Income Tax

APPELLANT

Vs

Stock Home India Ltd.

RESPONDENT

Date of Decision: Jan. 28, 2014**Acts Referred:**

- Income Tax Act, 1961 - Section 10(38), 115JB, 115JB(4), 142(1), 143(2)

Citation: (2015) 275 CTR 229 : (2014) 369 ITR 250**Hon'ble Judges:** Anita Chaudhry, J; Ajay Kumar Mittal, J**Bench:** Division Bench**Advocate:** Inderpreet Singh, Advocate for the Appellant; Pankaj Jain and Divya Suri,
Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.

This appeal has been filed by the Revenue under section 260A of the Income-tax Act, 1961 (in short "the Act"), against the order dated April 5, 2013, passed by the Income-tax Appellate Tribunal, Delhi Bench "G", New Delhi (hereinafter referred to as "the Tribunal") for the assessment year 2007-08, claiming the following substantial questions of law:

"(a) Whether the hon"ble Income-tax Appellate Tribunal is justified in law in deleting the penalty under section 271(1)(c) of the Act imposed by the Assessing Officer as the assessee filed the return of income without computing the correct tax liability under section 115JB read with section 10(38) of the Act and, thus, failed in disclosing the true and correct tax liability under section 115JB of the Act; the hon"ble Income-tax Appellate Tribunal failed to appreciate the fact that the assessee-company filed a revised computation of income only after detection of concealment by the Assessing Officer?

(b) Whether, on the facts and in the circumstances of the case, the hon"ble Income-tax Appellate Tribunal is justified in law by relying upon the judgment of

[Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd.](#), the facts of which are quite distinct and are, therefore, not applicable in the instant case?"

Briefly the facts as pleaded in the instant appeal may be noticed. The assessee was deriving income under the head "Business and profession" by trading in share and also from investment in shares. The assessee filed its return of income for the assessment year 2007-08 on September 30, 2007, declaring a total income of Rs. 1,53,56,681. The total tax computed by the assessee in the computation of income was Rs. 30,42,878. During the course of the assessment proceedings, the Assessing Officer noted that the assessee was liable to pay tax under the provisions of section 115JB of the Act. Further, Form No. 29B required to be filed under section 115JB(4) of the Act was not filed. The assessee claimed exemption under section 10(38) of the Act on the long-term capital gains on sale of securities/shares. As per the proviso to section 10(38) of the Act, the profit on long-term capital gains was to be added while computing the book profit and tax liability under section 115JB of the Act. The case was selected for scrutiny. During the course of the assessment proceedings, the assessee filed a revised computation of income and Form No. 29B on December 4, 2009. The book profit of the assessee was computed at Rs. 4,77,25,617 and the tax liability under section 115JB of the Act was computed at Rs. 47,72,562 (10 per cent of the book profit). The Assessing Officer, vide order dated December 18, 2009 (annexure A-I) framed assessment and initiated penalty proceedings under section 271(1)(c) of the Act. The assessee did not challenge the assessment order in appeal. Thereafter, a penalty of Rs. 13,58,452 was imposed upon the assessee, vide order dated June 28, 2010 (annexure A-II). Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income-tax (Appeals) (for brevity "the CIT(A)") who, vide order dated March 10, 2011 (annexure A-III) allowed the appeal and deleted the penalty imposed by the Assessing Officer. The said order of the Commissioner of Income-tax (Appeals) was challenged by the Revenue by way of appeal before the Tribunal. The Tribunal, vide order dated April 5, 2013 (annexure A-IV) upheld the order of the Commissioner of Income-tax (Appeals) and dismissed the appeal. Hence, the present appeal by the Revenue.

2. Learned counsel for the appellant submitted that the Commissioner of Income-tax (Appeals) as well as the Tribunal had erred in deleting the penalty. According to the learned counsel, a proviso to section 10(38) of the Act which was inserted with effect from April 1, 2007, the long-term capital gains on shares was to be added while computing the book profit as per the provisions of section 115JB of the Act. The assessee had filed a revised computation only after the concealment was detected by the Assessing Officer on issuance of notice under section 142(1) and section 143(2) of the Act. It was urged that the reliance of the Tribunal on the decision of the apex court in [Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd.](#), was misplaced.

3. On the other hand, the learned counsel for the assessee besides supporting the order passed by the Tribunal submitted that the Finance Act of 2006 amended with effect from April 1, 2007, whereby a proviso was inserted for the first time which was made relevant for the assessment year in question. It was under a bona fide belief, unaware of the amendment whereby a proviso was inserted, the long-term capital gains on the shares was not taken into consideration while determining the book profits under section 115JB of the Act. It was stoutly argued that the Tribunal has rightly placed reliance upon Reliance Petroproducts Ltd.'s case (supra) and deleted the penalty.

4. After hearing learned counsel for the parties, we find considerable force in the submissions made by the learned counsel for the respondent. The Tribunal, while deleting the penalty, had noticed as under:

"4. Having gone through the orders of the authorities below we find that during the course of the assessment proceedings, the Assessing Officer observed that the assessee was liable under the provisions of section 115JB and that the assessee has not filed Form No. 29B which is required to be filed under section 115JB(4) of the Act. The assessee had claimed long-term capital gains on the sale of securities/shares as exempt under section 10(38) of the Act for the purpose of MAT provision the Assessing Officer was of the view that as per first proviso to section 10(38) the profit on long-term capital gains is to be added while computing the book profit and tax liability under section 115JB. The Assessing Officer issued show cause notice in this regard to the assessee. The assessee, thereafter, revised the computation of income. The Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act and levied penalty of Rs. 13,58,452 with this finding that the assessee had filed a revised computation of income only after detection of concealment of facts. The learned Commissioner of Income-tax (Appeals) has deleted the penalty accepting the contention of the assessee that it had neither concealed the particulars of income nor furnished inaccurate particulars of income and relied on the decision of the hon'ble Supreme Court in the case of [Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd.](#), and of the hon'ble Punjab and Haryana High Court in the case of [Commissioner of Income Tax Vs. SSP P. Ltd.](#), . The explanation of the assessee before the learned Commissioner of Income-tax (Appeals) remained that the proviso to section 10(38) of the Act was inserted with effect from April 1, 2007, and prior to that long-term capital gains on shares was not to be considered for applicability of MAT provisions. When this amendment came to the knowledge of the assessee, it immediately obtained the auditors report in Form No. 29B and filed the same along with the revised computation of income. It was accordingly argued that the assessee had neither concealed the particulars of income nor furnished inaccurate particulars of income so as to attract the provisions of section 271(1)(c) of the Act. We do not have any reason to doubt bona fide of the assessee in the above explanation. It is also an undisputed fact that the assessee had furnished details of income and expenditure in its return which details in

themselves were not found to be inaccurate. Thus, the learned Commissioner of Income-tax (Appeals) has rightly held that it cannot be said that the assessee had concealed the particulars of income or furnished inaccurate particulars thereof. In the case of CIT v. Reliance Petroproducts (P.) Ltd. (supra) followed by the learned Commissioner of Income-tax (Appeals) it has been held that furnishing of inaccurate particulars mean details specified in return which are not exact or correct, not according to truth or erroneous and if the assessee furnishes details of income and expenditure in its return which details in themselves are not found to be inaccurate which cannot be said that the assessee has concealed the particulars of income or furnished inaccurate particulars merely because in relation to those particulars as claim for deduction is made which is not accepted. We thus do not find infirmity in the first appellate order on the issue. The same is upheld. The ground is accordingly rejected."

5. It was not disputed that, vide the Finance Act, 2006, a proviso was inserted in section 10(38) of the Act, with effect from April 1, 2007, and prior to the insertion of the aforesaid proviso under section 10(38) of the Act, the long-term capital gains on shares was not required to be included while determining the book profits under section 115JB of the Act. The said proviso reads thus:

"Provided that the income by way of long-term capital gains of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB."

6. According to it, the long-term capital gains on shares is to be included while determining the book profits. It was for the first time that for the assessment year 2007-08 onwards, the aforesaid provision became applicable. The plea of the assessee regarding the bona fides has been accepted by the Tribunal. There is nothing to doubt the veracity of the aforesaid findings recorded by the Tribunal. In view of the above, no question of law much less a substantial question of law arises in this appeal for consideration of this court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.