

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1378/Mds/2015

निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Commissioner of
Income Tax,
Corporate Circle – 2,
63-A, Race Course Road,
Coimbatore.

(अपीलार्थी/Appellant)

v. M/s Core Carbons Pvt. Ltd.,
91, Krishna Colony,
Singanallur,
Coimbatore – 641 005.

PAN : AABCC 2663 B

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Dr. Milind Madhukar Bhusari, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 15.03.2017

घोषणा की तारीख/Date of Pronouncement : 20.04.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -1, Coimbatore, dated 20.03.2015 and pertains to assessment year 2011-12, deleting the penalty levied under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the assessee is engaged in the business of manufacturing and sale of activated carbon, which is used in industrial applications. During the year under consideration, the assessee claimed deduction under Section 10B of the Act. The Assessing Officer, during the assessment proceedings, found that the assessee commenced production from 25.11.1999 and the qualifying ten years period commences from the assessment year 2000-01 and ends with assessment year 2009-10. Therefore, during the year under consideration, the assessee is not eligible for any deduction under Section 10B of the Act. Moreover, the assessee was approved as 100% Export Oriented Unit on 16.03.2005. Therefore, the assessee is eligible for deduction under Section 10B of the Act from the assessment year 2005-06 till 2009-10. Therefore, the claim made by the assessee from assessment year 2010-11 is a wrong claim. This was also accepted by the assessee during the course of assessment proceedings that the claim was made due to misinterpretation of amendment made to Section 10B of the Act. Accordingly, the Assessing Officer disallowed the claim of the assessee under Section 10B of the Act

to the extent of ₹14,31,84,730/-. Since the wrong claim was made, the Assessing Officer levied penalty under Section 271(1)(c) of the Act. According to the Ld. D.R., the CIT(Appeals) found that the assessee has not filed any inaccurate particulars. When the mistake pointed out to the assessee during the assessment proceedings, the assessee accepted the mistake and filed revised return withdrawing the claim under Section 10B of the Act. Therefore, the CIT(Appeals) is not justified in deleting the penalty levied by the Assessing Officer. The Ld. D.R. placed reliance on the judgment of Apex Court in Mak Data P. Ltd. v. CIT in Civil Appeal No.9772 of 2013 and also judgment of Delhi High Court in CIT v. Zoom Communication (P.) Ltd. (2010) 327 ITR 510.

3. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee is 100% Export Oriented Unit and the same was approved as such by the Joint Development Commissioner on 16.03.2005. According to the Ld. counsel, the assessee was under the impression that it was eligible for deduction under Section 10B of the Act for a period of ten consecutive years from the year in which the assessee commenced the production. Referring to Finance Act, 2009, the Ld.counsel submitted that the

Sunset Clause for units in free trade zones was extended from the assessment year 2010-11 to assessment year 2011-12. Therefore, according to the Ld. counsel, there was a misconception of provisions of Section 10A and 10B of the Act in view of Finance Act, 2009. After seeing the Board's circular in Circular No.1 of 2005, the assessee withdrew the claim made under Section 10B of the Act. The assessee was initially eligible for exemption under Section 10B of the Act. Proviso to Section 10B(1) of the Act was amended twice once by Finance Act, 2008 and once by Finance Act, 2009. The assessee also made the claim till assessment year 2011-12 only.

4. The Ld.counsel for the assessee further submitted that the Union Finance Minister has also clarified on the floor of Parliament that the Sunset Clause for claiming deduction under Section 10A and 10B of the Act would be extended for one more year. In view of the clarification made by the Union Finance Minister on the floor of Parliament, the assessee was under the *bona fide* impression that it is eligible for exemption under Section 10B of the Act till 31.03.2015. However, in view of the Sunset Clause, the assessee restricted the claim upto the year 2011-12. The Ld.counsel further

submitted that the assessee has furnished all the details of the income and also made claim under Section 10B of the Act. According to the Ld. counsel, merely because the assessee made a claim as per the statutory provision, that cannot be a reason for levying penalty under Section 271(1)(c) of the Act.

5. Referring to Section 271(1)(c) of the Act, the Ld.counsel for the assessee submitted that penalty under Section 271(1)(c) of the Act can be imposed only when the assessee has furnished inaccurate particulars of income or conceal any part of its income. In this case, according to the Ld. counsel, it is nobody's case that the assessee has furnished inaccurate particulars of income. The entire details of source of income were admittedly furnished before the Assessing Officer. It is also nobody's case that the assessee has concealed any part of income. Therefore, the claim made by the assessee for exemption under Section 10B of the Act cannot be construed to be furnishing inaccurate particulars or concealing any part of income of the assessee. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer. The Ld.counsel placed his reliance on the

judgment of Apex Court in CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer levied penalty under Section 271(1)(c) of the Act mainly on the ground that the assessee has filed inaccurate particulars of income by claiming deduction under Section 10B of the Act, which is otherwise not allowable for exemption under Section 10B of the Act. The Assessing Officer placed reliance on the judgment of Apex Court in Mak Data P. Ltd. (supra).

7. We have carefully gone through the judgment of Apex Court in Mak Data P. Ltd. (supra). In the case before Apex Court, the Assessing Officer found that the assessee invested in shares. The assessee has also offered the investment in shares to the extent of ₹40.74 lakhs for taxation. The Assessing Officer assessed the investment in shares under the head "Income from Other sources" and also initiated penalty proceeding under Section 271(1)(c) of the Act. In those factual circumstances, the Apex Court found that the surrender of income was not voluntary and the same was made in view of detection made by the Assessing Officer in the course of

search proceedings. The survey proceeding was conducted more than ten months before the assessee filed the return of income. The Apex Court found that had it been intention of the assessee to make full and true disclosure of its income, it would have filed return of income declaring the income including the amount, which was surrendered later in the course of assessment proceeding. Therefore, the Apex Court found that the penalty was rightly levied under Section 271(1)(c) of the Act.

8. In the case before us, it is not a case of unearthing the income during the course of search or survey proceeding. The assessee claimed deduction under Section 10B of the Act by furnishing all the particulars of income. Claim under Section 10B of the Act is a statutory claim under the scheme of Income-tax Act. The Assessing Officer found that the manufacturing activity of the assessee was commenced from the assessment year 2000-01. Therefore, the assessee, at the best, can make claim under Section 10B of the Act from the assessment year 2000-01 to 2009-10. The Assessing Officer has also found that the assessee obtained approval as 100% Export Oriented Unit on 16.03.2005. Therefore, the assessee can claim only from assessment year 2005-06 till

2009-10. The assessee's main contention is that there are two amendments to Section 10B of the Act one made in the year 2008 and another in the year 2009. It is not in dispute that the Sunset Clause for exemption was extended. In view of the confusion in the mind of taxpayer and officers, the CBDT also clarified by issuing circular. Therefore, it is a case of misunderstanding the statutory provision by the assessee and the officers. The assessee understood the provision of exemption under Section 10B of the Act in a particular manner and the Assessing Officer has understood the same in another manner.

9. We have carefully gone through the judgment of Delhi High Court in Zoom Communication (P.) Ltd. (supra). The Delhi High Court after considering the judgment of Apex Court in Reliance Petroproducts (P.) Ltd. (supra), has observed at para 19, as follows:-

“19. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be *bona fide*. If the claim besides being incorrect in law is *mala fide*, Explanation 1 to Section 271(1) would come into play and work to the disadvantage of the assessee.”

10. We have carefully gone through the judgment of Apex Court in Reliance Petroproducts (P) Ltd. (supra). In the case before Apex Court, the assessee-company claimed interest expenditure as deduction. However, the Assessing Officer disallowed the claim of the assessee and made addition. The assessee claimed interest expenditure on the loan borrowed by it for purchasing some IPL shares. The assessee did not earn any income by way of dividend from those shares. The assessee claimed disallowance of expenditure under Section 14A of the Act. The assessee explained before the Assessing Officer that entire details were given in writing and there was no concealment of income nor any inaccurate particulars of such income were furnished. In those factual circumstances, the Apex Court held that mere making of a 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 inaccurate particulars.

11. Moreover, there was a real confusion as stated above in view of extension of Sunset Clause and amendment made in Finance Act, 2008 and 2009. Therefore, the claim made by the

assessee being a *bona fide* one, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer. As found by the Apex Court in Reliance Petroproducts (P.) Ltd. (supra), mere making a claim under Section 10B of the Act after furnishing all the particulars of income, cannot be a reason for concluding that the assessee has furnished inaccurate particulars or concealed any part of income. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 20th April, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 20th April, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | |
|--|--------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent |
| 3. आयकर आयुक्त (अपील)/CIT(A)-1, Coimbatore | |
| 4. आयकर आयुक्त/CIT-1, Coimbatore | |
| 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |