

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 4327/Del/2014
A.Y. 2008-09**

Rashi Wears Pvt.Ltd. D 972, New Friends Colony New Delhi PAN: AAACR 4887 R	vs.	Addl.CIT Range XV New Delhi
(Appellant)		(Respondent)

Appellant by	Sh.Rahul Kampani, CA
Respondent by	Sh. Atiq Ahmad, Sr.D.R.
Date of Hearing	22 nd November, 2017
Date of Pronouncement	29 th November, 2017

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present penalty appeal has been filed by assessee against order dated 13/06/14 passed by Ld. CIT (A)-18, New Delhi for assessment year 2008-09 on the following grounds of appeal:

“1. On the facts and in circumstances of the case, the order of Commissioner of Income Tax (Appeals) XVIII, New Delhi is wrong, perverse, illegal, and against the provisions of law which is liable to be quashed.

2. On the facts and in circumstances of the case, the learned CIT (A) New Delhi was totally unjustified in confirming the penalty of Rs.6,94,450=00 without appreciating the facts of the assessee case and considering the decisions the assessee has relied upon. The assessee while claiming deduction u/s 80 IB, has merely followed the law prevailing on the date of filing his return and has followed the decision of the learned Delhi High Court in CIT vs Elteck SGC (P) Ltd (2008) 3 DTR (Del)241.

3. The learned CIT(A) has failed to appreciate that the cause of action for penalty u/s 271(1)(c) arose on the date of filing of return which was 01/10/2008. On that date the assessee had a previous year decisions in his favour and had been following the decision of CIT vs Elteck SGC (P) Ltd. (2008) 3 DTR (Del) 241 which was the binding decision of the High Court. Furthermore the learned CIT(A) while adjudicating on the assessment for A.Y.2007-08 has observed that this very issue has been decided in favour of the assessee for AY 2002-03 and had also observed that the Honble Delhi High Court has also dismissed the second appeal filed by the revenue against the ITAT order in favour of the assessee passed by the Hon'ble ITAT C Bench vide order dated 25/04/2008 in ITA no.4797/De112007 for AY 2003-04.

4. The decision of the learned Supreme Court in Liberty India came after the assessee had filed his return which led to the ITAT deciding on 24/01/2012 that deduction u/s 80iB was not allowable to the assessee .

5. The appellant has respectfully to submit that since the assessee has made full and complete disclosure of all details as required and a mere change in decision by the learned Courts should not be a ground for levying penalty.

6. It will be worthwhile to mention the observation of the Hon'ble Supreme Court in CIT Vs Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 wherein they have stated that where there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false there would be no question of inviting the penalty under section 271(1)(c) of the Act. a mere making of the claims, 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. They further observed that by no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars.

7. Also, in the case of CIT Vs Harshwardhan Chemicals and Minerals Ltd. 259 ITR 112 (Raj.) the Hon'ble High Court held that where an arguable, controversial or debatable deduction is claimed, the claim could not be said to be false, otherwise it would become impossible for any assessee to raise any claims or deduction which might be debatable and it was not the intention of the Legislature to make punishable such claims, if they were not accepted.

8. In our case the assessee had filed his return on 01/10/2008 on which date the law as up held by Delhi High Court was prevalent and the decision of Supreme Court came nearly a year later. There was no way the assessee can be accused of furnishing inaccurate particulars.

9. It may be pertinent to mention some of the judgment in favour of our submission.

a) Where the facts were disclosed but wrong claims for special deduction were made, it was held that it was not a case of concealment of income & penalty could not be imposed. CIT vs International Audio Visual Co. (2007) 288 ITR 570 (Del) CIT vs Nath Bros. Exim International Ltd. (2007) 288 ITR 670 (Del)

b) Merely because a claim for deduction was found inadmissible, penalty does not necessarily follow. Balaji vegetable Products (P) Ltd. vs CIT (2007) 290 ITR 172 (Kar)

c) *The Supreme Court rationale of the decision in CIT (Addl.) vs Jeevan Lal Sah (1994) 205 ITR 244 and Sir Shadi Lal Sugar & General Mills Ltd. vs CIT (1987) 168 ITR 705 (SC) it was held that a wrong claim with disclosure of full facts does no merit levy of penalty.*

d) *The AO disallowed the deduction u/s 80-IB claimed by the assessee & Initiated penalty proceedings. The Tribunal held that there is no merit in holding the assessee to have furnished inaccurate particulars of income in respect of such claim.*

The assessee had disclosed material facts relevant for the computation of its income in its return. In respect of such claim, there was no justification for levy of penalty.

Asstt. CIT vs Perfect Forgings (2011) 11,-ITR (Trib.) 166/15 Taxmann. corn. 54 (Chd.)

e) *Making a wrong claim is not par with concealment or giving inaccurate information, which may call for levy of penalty u/s 271 (1)(c).ITO vs Parikh Investment & Development (P) Ltd. (2011) 43 SOT 3371 (2010) 5 Taxmann. Com.100(mumb) Waiter Saldhana vs Dy. CIT (2011) 44 SOT 26/9 taxman com 72 (mumb).*

10. We hope keeping in view the facts of the case and our submission that at the time of filing the return he was within his rights to claim deduction u/s 80 IB following the judgment of Delhi High Court ' and had no means of anticipating the judgment of the Supreme Court to follow later. Furthermore the assessee had been claiming this deduction since AY 2001-02 and the same was being allowed every year by the Department.

11. We hope keeping in view the facts of the case and our submission that at the time of filing the return the was within his rights to claim deduction u/s80 IB following the judgment of Delhi High Court and had no means of anticipating the judgment of the Supreme Court to follow later. Furthermore the assessee had been claiming this deduction since AY 2001-02 and the same was being allowed every year by the Department.

12. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing."

2. Brief facts of the case are as under:

Assessee filed its return of income declaring total income of Rs. 51,97,330/ on 01/10/08 after claiming deduction of Rs.22,47,425/-under section 80IB. The assessment was completed on 24/12/10 wherein assessing officer disallowed deduction claimed by assessee under 80 IB of the Act on the ground that, receipt of duty drawback from the Customs amounting to Rs. 1,45,90,2430/-on exports effected by assessee, did not form part of the total income derived from the industrial activities. It was submitted by authorities

below during the quantum proceedings that assessee had filed its return claiming deduction, based on the decision of Hon'ble Delhi High Court in the case of *CIT vs. Elteck SGC (P) Ltd. and* that the decision was rendered by Hon'ble Delhi High Court on 19/02/08. It was further submitted that assessee filed its return of income on 01.10.2008 following the ratio laid down by Hon'ble Court.

2.1. It was submitted that Ld.AO initiated penalty proceedings and notice levying penalty was issued to assessee which was confirmed by Ld.CIT(A).

2.2. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us now.

2.3. It has been contended by Ld.AR that at the time when the return was filed by assessee, it had merely followed the law prevailing as on the date of filing of returns by virtue of the decision in the case of *CIT vs. Elteck SGS Pvt. Ltd.* reported in (2008) 3 DTR 241 (del).

2.4. It has been submitted that even for assessment year 2007-08 claim of assessee was allowed by this Tribunal, against which revenue had preferred an appeal before Hon'ble Delhi High Court which was dismissed. He submitted that these details have been recorded in paragraph 4 of Ld.CIT (A)'s order by way of submissions advanced by assessee before the Ld.CIT (A). He submitted that assessee was under a bona fide belief of the claim was available for the year under consideration and therefore there has been no concealment or filing of inaccurate particulars by assessee. Ld.AR thus prayed for the deletion of penalty.

2.5. Ld. DR on the contrary placed reliance upon the orders of the authorities below.

3. As rightly pointed out by Ld.AR it is observed that assessee followed the ratio laid down by Hon'ble Delhi High Court in the case of *CIT vs. Elteck SGS Pvt. Ltd.*(supra). Even for the previous year 2007-08 assessee's claim under 80 IB was allowed by this Tribunal against which appeal of revenue before Hon'ble Delhi High Court was dismissed. These facts has not been disputed by the authorities below in any manner whatsoever.

4. Under these circumstances we are of the considered opinion that mere making of claims which is not sustainable in law subsequently will not amount to furnishing of inaccurate particulars regarding the income of assessee as observed by Hon'ble Supreme Court in the case of *CIT vs. Reliance Petro Products Pvt.Ltd* reported in (2010) 322 ITR 158.

4.1. Respectfully following the same we delete the penalty levied by Ld. AO. Accordingly the grounds raised by the assessee stands allowed.

5. In the result appeal filed by the assessee stands allowed.

Order pronounced in the open court on 29.11.2017.

Sd/-

(R.S. SYAL)
Vice President

Sd/-

(BEENA A PILLAI)
Judicial Member

Dated 29th November, 2017.

*mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi

ITA 4327/Del/14 Assessment Year 2008-09
Rashi Wears Pvt.Ltd.

		Date	
1.	Dragon dictation	23.11.2017	
2.	Draft placed before author	27.11.2017	
3.	Draft proposed & placed before the second Member		
4.	Approved Draft comes to SrPS/PS		
5.	Kept for pronouncement on		
6.	File sent to Bench Clerk		
7.	Order uploaded		