

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.444/Ind/2013  
Assessment Year: 2006-07**

|                       |                     |  |
|-----------------------|---------------------|--|
| ACIT, 3(1)<br>Indore, | <b>बनाम/</b><br>Vs. | M/s. SCC Project Pvt. Ltd.,<br>206, Mourya Centre, 16, Race<br>course road, Indore |
| (Revenue)             |                     | (Respondent )  |
| P.A. No.AABCM3529L    |                     |  |

|                               |                           |
|-------------------------------|---------------------------|
| Revenue by                    | Shri Lal Chand, CIT- DR   |
| Respondent by                 | Shri Sumit Nema, Sr. Adv. |
| <b>Date of Hearing:</b>       | <b>10.01.2018</b>         |
| <b>Date of Pronouncement:</b> | <b>19.01.2018</b>         |

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal by the Revenue is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I, Indore, (in short 'CIT(A)'), dated 22.02.2013 pertaining to the A.Y. 2006-07. The revenue has raised following grounds of appeal:

*"On the facts and the circumstances of the case the Ld. CIT(A) has erred in cancelling penalty imposed u/s 271(1)(c) of Rs.1,58,64,985/- without appreciating the fact that assessee furnished inaccurate particulars of income by willfully claiming deduction u/s 80IA, not admissible on facts and law.*

2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs.1,58,64,985/- imposed u/s 271(1)(c) without appreciating the fact that the decision of apex court in Reliance Petroproducts Limited 322 ITR 128 is not applicable because assessee has furnished inaccurate particulars by claiming the deduction u/s 80IA.*

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts by deleting the penalty solely on the basis of retrospective amendment of section 80IA by virtue of Finance Act 2007 whereas there existed the facts unearthed during assessment proceedings that assessee has furnished inaccurate particulars while claiming the deduction u/s 80IA.*

4. *On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in canceling the penalty without granting opportunity to Revenue despite the fact that assessing officer has granted opportunity to assessee and assessee did not furnish any reply during the course of penalty proceedings before the AO.*

5. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty imposed by the AO without appreciating the facts that even if the preposition of retrospective amendment to the Act is accepted still the assessee was having opportunity to either revise the return or revise the computation by accepting during scrutiny proceedings or before CIT(A) and I.T.A.T. in quantum proceedings that the deduction u/s 80IA was incorrectly claimed but on the contrary assessee on merits kept on contesting the rejection of deduction u/s 80IA.”*

**2.** Briefly stated facts are that while framing the assessment, Assessing Officer (in short 'AO') made disallowance of deduction u/s. 80IA and initiated penalty u/s. 271(1)(c) in respect of quantum addition the issue is pending at admission stage before Hon'ble Jurisdictional High Court.

3. On further appeal the Ld. CIT(A), deleted the penalty on the ground that when the return was filed no amendment was made in

the provision and the assessee was entitled for deduction u/s 80IA. Hence, the assessee cannot be held liable to furnishing of inaccurate particulars.

4. Aggrieved by this deletion of penalty, the revenue is in appeal.

5. The Ld. DR submitted that the Ld. CIT(A) was not justified in deleting the penalty, he submitted that the law came into force when the assessment was being made. The assessee did not revise its return of income by excluding claim of deduction u/s 80IA. The Ld. DR submitted that judgment of Hon'ble Supreme court in the case of Reliance Petroproducts Limited 322 ITR 128 is not applicable in the facts of the present case, then the Ld. CIT(A) has wrongly applied the ratio laid by the Hon'ble Supreme Court.

6. Per contra Ld. Senior Counsel for the assessee submitted that firstly, the assessee has challenged being treated as contractor, therefore, the assessee is challenging the non-availability of deduction u/s 80IA. Secondly, when return was filed, there was no such provision. In earlier year, the revenue has allowed the claim. He submitted that the issue being debatable penalty cannot be levied.

7. We have heard the rival contentions and perused material on record and gone through the orders of the authorities below. The Ld. counsel for the assessee relied on the judgment of Hon'ble Jurisdictional High Court in the case of Pr. CIT vs. Vinod Kumar Shukla Construction Pvt. Ltd. Income Tax Appeal No.29 of 2016, where the view of the tribunal was confirmed that where claim made erroneously u/s 80IA under the assumption that they are

entitled for deduction would not attract the penalty u/s 271(1)(c) of the Act. There is no dispute with regard to the fact that at the time on filing of return, the assessee was entitled for claim of deduction u/s 80IA of the Act. The law was amended subsequent to filing of ITR. The change of concealment of income or inaccurate particulars of income can only be made with regard to income tax return and the law in force at that point of time. In our view the assessee cannot be held liable for penalty u/s 271(1)(c) of the Act. Moreover, the assessee has challenged the entitlement of deduction u/s 80IA. The issue is pending before the Hon'ble Jurisdictional High Court. Therefore, we do not see any reason to interfere in the findings of the Ld. CIT(A), same is hereby confirmed. Thus, grounds raised by the Revenue are devoid of any merit, same are dismissed.

8. In the result, the appeal of the Revenue is dismissed.

*Order was pronounced in the open court on 19.01.2018.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 19 / 01/2018

*Patel, P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Private Secretary/DDO, Indore**