

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No. 1892/Kol/2016

Assessment Year : 2003-04

The Bisra Stone Lime Co. Ltd.
Kolkata

-vs.-

D.C.I.T., Circle-5,
Kolkata

[PAN : AABCT 2118 C]

(Appellant)

(Respondent)

For the Appellant : Shri T.P.Kar, AR
For the Respondent : Shri Arindam Bhattacharjee, Addl. CIT

Date of Hearing : 08.02.2018.

Date of Pronouncement : 14.02.2018

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Assessee against the order dated 28.07.2016 of C.I.T.(A)-2, Kolkata relating to A.Y.2003-04.

2. In this appeal the assessee has challenged the order of CIT(A) whereby the CIT(A) confirmed the order of the AO imposing penalty on the assessee u/s 271(1)(c) of the Income Tax Act, 1961 (Act).

3. The facts and circumstances under which penalty u/s 271(1)(c) of the Act was imposed on the assessee by the AO are as follows :-

The Assessee is a company engaged in the business of mining and sale of limestone and dolomite. For A.Y.2003-04 the assessee filed return of income declaring a loss of Rs.37,71,58,866/-. In the computation of total income the assessee arrived at loss declared in the income after claiming deduction of a sum of Rs.13, 23, 974/- under the head ‘ miscellaneous expenses written off.’ Under section 35E of the Act an assessee which is an Indian company if it incurs expenses in connection with

prospecting, extraction or production of any mineral after 31st day of March, 1970 till achieving commercial production then such an assessee will be entitled to deduction of all expenses incurred in any one or four years immediately preceding the year of commercial production. All expenses relating to prospecting of any mineral or development of mine or other natural products will be allowed as a deduction.. However, the expenditure cannot exceed the income earned by the assessee in the previous year of commercial exploitation of mine or other natural deposits. Since the assessee in the present case had a nil or negative income the assessee was not entitled to deduction u/s 35E of the Act. The AO therefore disallowed claim of the assessee for deduction u/s 35E of the Act. Accordingly loss was determined by the AO as follows :-

“Total loss as per return filed	Rs.(-)37,71,58,866/-
Add: Deduction claimed u/s 35E (as discussed above)	<u>Rs.(+) 13,23,974/-</u>
Total Loss	Rs.(-)37,58,34,892/-“

5. In respect of disallowance of deduction u/s 35E of the Act, the AO initiated penalty proceedings u/s 271(1)(c) of the Act and imposed penalty on the assessee holding that the assessee concealed particulars of income and furnished inaccurate particulars of income. On appeal by the assessee the CIT(A) confirmed the order of AO. Hence this appeal by the assessee before the tribunal.

6. We have heard the rival submissions. The Id. Counsel for the assessee submitted that mere disallowance of expenses for the reason that the assessee did not have positive income cannot said to be either furnishing inaccurate particulars of income or concealing particulars of income. The Id. Counsel pointed out that even the AO accepted the fact that the assessee was entitled to claim deduction u/s 35E of the Act and it is only because of an exception in section 35E(4)(b) of the Act that in the case of ‘ nil ‘ income during the relevant previous year deduction will not be allowed, the claim of the assessee was not accepted. The Id. Counsel relied on the decision of the Hon’ble

Supreme Court in the case of CIT vs Reliance Petro products Ltd. 322 ITR 158 wherein it was held that a mere making of a claim which is not accepted by itself will not amount to furnishing inaccurate particulars of income or concealing particulars of income. The ld. DR relied on the order of the AO.

7. We have considered the rival submissions. In our view this is not a fit case for imposing penalty u/s 271(1)(c) of the Act. As rightly contended by the ld. Counsel for the assessee, there is no dispute in the present case that the assessee was entitled to claim deduction u/s 35E of the Act. Therefore the claim for deduction by the assessee cannot said to be furnishing inaccurate particulars of income. It is only because of the provision of section 35E(4)(b) of the Act which lays down a restriction that there should be positive income for allowing deduction u/s 35E of the Act that the claim of the assessee was rejected by the AO. The fact that the claim of the assessee is rejected by itself will not amount to furnishing inaccurate particulars. The decision rendered by the Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Ltd.(supra) clearly supports the stand taken by the assessee. We therefore hold that penalty imposed in the present case deserves to be cancelled and direct the AO to cancel the penalty imposed.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 14.02.2018

Sd/-

[Waseem Ahmed]
Accountant Member

Sd/-

[N.V.Vasudevan]
Judicial Member

Dated : 14.02.2018
[RG Sr.PS]

Copy of the order forwarded to:

1. The Bisra Stone Lime Co. Ltd.AG-104, Sourav Abasan Sal Lake Sector-2, Kolkata-700091.
2. D.C.I.T., Circle-5, Kolkata.
3. CIT(A)-2, Kolkata
4. C.I.T.-2, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head Of Office/ D.D.O., ITAT Kolkata Benches