

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'D' KOLKATA

[Before Hon'ble Shri Waseem Ahmed, AM &amp; Shri S.S.Viswanethra Ravi, JM ]

**ITA No.1390/Kol/2016**  
**Assessment Year : 2003-04**

Shri Swapan Kumar Poddar  
Kolkata  
(PAN: AFLPP 3267 L)  
(Appellant)

-versus-

I.T.O., Ward-41 (3),  
Kolkata  
  
(Respondent)

For the Appellant: Shri S.P.Dutta, Advocate  
For the Respondent: Shri Arindam Bhattacharjee, Addl. CIT

Date of Hearing : 01.02.2018.

Date of Pronouncement : 28.03.2018.

**ORDER****Per S.S.Viswanethra Ravi, JM**

This is an appeal by the Assessee against the order dated 19.02.2016 passed by C.I.T-(A)-13, Kolkata for A.Y.2003-04 wherein he has confirmed the penalty imposed on the assessee by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (Act).

2. The ld. AR submits that the assessee claimed deduction u/s 80HHC of the Act for an amount of Rs.19,74,566/- whereas on examination of the material facts on record the AO restricted the said claim to Rs.9,80,169/-. Thereafter the AO initiated penalty proceedings for concealment of income as well as furnishing inaccurate particulars of income. The CIT(A) confirmed the penalty imposed by the AO.

3. The ld. AR placed reliance on the decision of the Hon'ble ITAT, Delhi in the case of Crew Bos Products Pvt. Ltd. Vs D.I.T. order dated 08.08.2014 and by referring to page no.8 argued that the assessee has given full material facts before the AO and having given all the material facts before the AO the AO computed the deduction u/s 80HHC of the Act and restricted the same to an expenditure of

Rs.9,80,169/-. In such circumstances the AO, holding the assessee has concealed its particulars of income or furnishing inaccurate particulars of income and initiating the penalty proceedings and imposing penalty thereon is not maintainable under law. . The Id. AR drew our attention to the First Appellate Authority's order dated 08.1.2017 for A.Y.2002-03 in assessee's own case wherein the CIT(A) having considered the material facts on record cancelled the penalty imposed by the AO on similar set of facts. The Id. AR argued that penalty imposed for the assessment year under consideration is not maintainable as it was a mistake of claiming incorrect claim before the AO. The Id. DR relied on the order of CIT(A).

4. Heard rival submissions and perused materials on record. It is observed from the order of the AO that the assessee has claimed deduction u/s 80HHC of the Act and the AO recomputed the same and restricted to Rs.9,80,169/- and it is clear that the assessee disclosed full material facts in respect of deduction u/s 80HHC of the Act and the AO was of the opinion that the assessee claimed excess deduction and restricted the same to Rs.9,80,169/-. We find that the assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC). However, the CIT(A) without considering the same upheld the order of AO imposing penalty u/s 271(1)(c) of the Act. The Coordinate Bench of Delhi Tribunal in the case of Crew Bos Products Pvt. Ltd. (supra) considered the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd and the decision of the Hon'ble High Court of Delhi in the case of Exports Finance Ltd which held that where the facts are fairly disclosed in the return of income penalty cannot be levied merely because an amount is allowed or taxed as income. We note that the facts in the present case are similar to the facts followed in the case of Hindustan Steel Ltd and Export Finance Ltd of Hon'ble Supreme Court and Hon'ble High Court respectively. We find force in the arguments of the Id. AR in holding that the AO cannot levy penalty u/s 271(1) (c) of the Act. We also find in A.Y.2002-03 in assessee's own case on similar set of facts the AO imposed penalty u/s 271(1)(c) of the Act. The CIT(A) in the first appeal by placing reliance in the case of Reliance Petro Products Ltd of ITA No.1390/Kol/2016 Swapan Kumar Poddar A.Y.2003-04

Hon'ble Supreme Court reported in 322 ITR 158 cancelled the penalty as it is not leviable for making an incorrect claim. Therefore in view of the discussion and the principles laid down by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi we cancel the penalty levied by the AO and confirmed by the CIT(A) u/s 271(1)(c) of the Act. Accordingly grounds raised by the assessee are allowed.

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

**Order pronounced in the open Court on 28.03.2018.**

Sd/-

[Waseem Ahmed]  
Accountant Member

Sd/-

[ S.S.Viswanethra Ravi ]  
Judicial Member

Dated : 28.03.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1. Shri Swapan Kumar Poddar, 521/A, Rabindra Sarani, Kolkata-700003.
2. I.T.O., Ward-41(3), Kolkata.
3. C.I.T.(A)-13, Kolkata
4. C.I.T.-15, Kolkata..
5. CIT(DR), Kolkata Benches, Kolkata.

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By order,

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

