

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.649 & 650(Asr)/2016
Assessment Year:2007-08 & 2009-10

M/s Shiva Mint Industries, Vs. Dy. CIT,
99-B, Birpur Industrial Estate, Circle-1, Jammu
Bari Brahmana, Jammu, (J&K)
(J&K)

PAN:ABBFS4825N
(Appellant)

(Respondent)

Appellant by: Sh. Somil Agarwal, (Ld. Adv.)
Respondent by: Sh. Bhawani Shankar (Ld. DR)

Date of hearing: 17.01.2018
Date of pronouncement: 05.04.2018

ORDER

PER N.K.CHOUDHRY, JM:

The assessee has filed the aforesaid two appeals U/s. 253 of the Act (hereinafter called as "the Act"), on feeling aggrieved against the orders dated 9.9.2016 passed by the Ld. CIT(A)-1, Amritsar Camp at Jammu (J&K), qua Asst. Years:2007-08 and 2009-10 respectively, by which, the Ld. CIT(A) confirmed the penalty order passed by the Assessing Officer.

2. In both the appeals, similar and identical issues have been raised, therefore, for the sake of convenience and brevity grounds and facts of ITA No.649(Asr)/2016 have been taken into

consideration for adjudication and the result of the same would also be applicable ipso facto to ITA No.650(Asr)/2016.

3. The assessee has raised the following grounds of appeal in ITA No.649(Asr)/2016.

“1. That on the facts and under the circumstances of the case and in law, the learned Commissioner of Income-tax (A) has erred in confirming the order of the Deputy Commissioner of Income Tax, Circle-1, Jammu passed under section 271(1)(c) of the Income Tax Act.

2. That on the facts and under the circumstances of the case and in law, the learned Commissioner of Income-tax (A) erred in confirming the penalty of Rs.7,36,250/- under section 271(1)(c) of the Income Tax Act by rejecting the submissions of the assessee in summary manner and thus the penalty order is illegal, invalid, bad in law and is liable to be set aside.

3. That the learned Commissioner of Income-tax (A) has completely failed to understand that the assessee has neither concealed the particulars of its income nor furnished inaccurate particulars of such income and that it was debatable issue that the speculative losses and its expenses amounting to Rs.23,82,700/- were required to be deducted from the eligible manufacturing profits under section 80IB(4) of the Income Tax Act.”

4. The brief facts of the case are that the assessee is a partnership firm, engaged in the business of manufacturing of Menthol and various other allied products, which are used as raw material by various drugs, pharmaceuticals and other similar units. The Assessing Officer, while computing the income of the assessee, disallowed the amounts under six heads. However, the Ld. CIT(A), on appeal confirmed the additions of Rs.23,37,393/- and Rs.45,307/- under the heads of speculative loss in commodities and MCX Commodity Exchange Expenses

respectively, which resulted into levy of penalty on account of furnishing of inaccurate particulars in respect of income, which was confirmed by the Ld. CIT(A) vide its order dated 09.06.2016.

5. On feeling aggrieved against the order impugned herein passed by the Ld. CIT(A), the assessee preferred the instant appeals and in support of its cases submitted that the assessee in the final computation of income, added MCX Commodity Exchange Expenses and speculative losses in the commodities to the tune of Rs.23,37,393/- and Rs.45,307/- while arriving at eligible profits for calculation of deduction u/s 80IB of the Act, however, the Assessing Officer did not allow the claim of the assessee on the ground that the same has resulted into inflating eligible profits for deduction u/s 80IB of the Act and the action of the AO was confirmed by the Ld. CIT(A), however, the assessee preferred the appeals against the orders passed by the ITAT, before the Hon'ble High Court of J&K and the same having been admitted by framing substantial question of law vide its order dated 18.02.2015. Further it was also argued by the Ld. AR even otherwise on the merit of the case, the assessee case is strengthened on the grounds that the amount of MCX Commodity Exchange Expenses and speculative loss in commodities as stated above, have been debited in the profit & loss account and since these transactions do not relate to the activities of the eligible business, therefore, the same have been added back while arriving at the correct profit of the eligible unit for claiming deduction u/s 80IB. Finally, it was submitted that in

view of the judgment passed by the Apex Court in the case of *Anantharam Veerasingaiah & Co. vs Commissioner Of Income Tax vs. CIT, 123 ITR 457(SC)*, the assessment proceedings and penalty proceeding are all together different and merely because amount was disallowed does not ipso facto lead to levy of penalty.

6. On the other hand, the Ld. DR relied upon the orders passed by the authorities below and submitted that order impugned herein are based on logical reasoning and does not suffer from any illegality, perversity and impropriety.

7. We have gone through with the facts and circumstances of the case, and rival submissions of the parties, as we realized that in the instant case, the assessee in the final computation of income, while arriving at eligible profits for calculation of deduction u/s 80IB of the Act, added back the amount under the heads of speculative loss in commodities and MCX Commodity Exchange Expenses to the tune of Rs.23,37,393/- and Rs.45,307/- respectively, however the same was disallowed by the AO, and on confirmation by the Ld. CIT(A) and ITAT, the AO levied the penalty at the rate of 100% tax sought to evaded on the ground of furnishing inaccurate particulars of income.

The Hon'ble Apex Court in the case of *CIT vs. Reliance Petro Products (Pvt.) Ltd. (2010) 322 ITR 158 (SC)* has held that penalty u/s 271(1)(c) is not attracted merely because the assessee has claimed deduction of interest expenditure which

has not been accepted by the Revenue and mere making of claim, which is not maintainable by law, by itself will not amount to furnishing of inaccurate particulars of income.

Even Hon'ble Punjab & Haryana High Court in the case of CIT vs. M/s. Raj Overseas ({2011} 336 ITR 261 {P&H}) held that no penalty u/s 271(1) (c) was leviable in respect of the deduction wrongly claimed by the assessee u/s 80IB of the Act in respect of income from Duty Draw Back.

While coming to the instant case, as the Revenue Department did not find the claim of the Asseeee as maintainable, however mere making claim by the Asseeee which otherwise not accepted by Revenue Department, by itself does not leads to furnishing of inaccurate particulars of income and therefore no base to entail the penalty under section 271(1) © of the Act, in view of Judgments passed by Apex Court in the case of CIT vs. Reliance Petro Products (Pvt.) Ltd. (Supra) and Punjab and Haryana High Court Judgment, in the case of CIT vs. M/s. Raj Overseas (Supra).

On the aforesaid considerations, deliberations and observations, while respectfully following the propositions laid down by the Apex Court and the various High Courts and considering the argument of the Assessee to the effect that the assessment proceedings and penalty proceedings are altogether different and merely because amount was disallowed does not ipso facto, lead to levy of penalty, we are of the considered

opinion that the penalty levied by the Assessing Officer and confirmed by the Ld. CIT(A) does not survive and hence liable to be set aside.

8. In the result, both the appeals filed by the assessee are allowed.

(SANJAY ARORA) ACCOUNTANT MEMBER	Sd/- (N.K.CHOUDHRY) JUDICIAL MEMBER
Dated: 05.04.2018	

9. I have perused the proposed order by my Id. brother, JM. My reason/s for the conclusion arrived at therein, however, is different, and for which a brief reference to the facts of the case would be required. The assessee-company owns and operates an industrial unit at Bari Brahmana, Jammu, manufacturing menthol (and other allied products), which unit is an eligible undertaking u/s. 80IB. The consolidated final accounts of the assessee-company (for the previous year relevant to AY 2007-08), however, bore a debit in a sum of Rs. 23.83 lacs to the Profit & Loss Account (P&L A/c) on account of speculation loss of Rs. 23.37 lacs, suffered on speculative trading in commodities, and MCX Commodity Exchange expenses (undertaken at HO/BO at Lucknow). The same were accordingly added back in its' return of income by the assessee while computing the profit of its' eligible undertaking for the purpose of deduction u/s. 80IB (PB page 1). As, therefore, deduction u/s. 80IB was claimed in a sum in excess of the reported profit by Rs. 23.83 lacs, the

Assessing Officer (AO) inferred the same to be in excess by the said amount and disallowed the same, also initiating penalty proceedings u/s. 271(1)(c). The assessment stood confirmed in quantum proceedings up to the Appellate Tribunal. Penalty was accordingly levied, and confirmed by the first appellate authority, so that, aggrieved, the assessee is in second appeal before us.

The issue is as to a plausible explanation for the claim under reference, i.e., deduction u/s. 80IB, stated to be in excess by Rs. 23.83 lacs, on account of exclusion of speculative loss and commodity exchange expense, an activity clearly independent of the manufacturing activity. The question of an excess claim, given the fact of the said exclusion – a pure matter of fact, even as admitted by the Id. counsel for the assessee, Sh. Somil Aggarwal, Advocate, does not arise. I respectfully, find the assessee's claim as without any flaw, much less liable for penalty u/s 271(1)(c). The reason is simple. Speculation losses are not a part of the business of the eligible undertaking, whose profits are subject to deduction u/s. 80IB. Profit and loss of such business, stated to be by its trading unit (at HO/BO), have, therefore, to be excluded while computing the profit of the eligible undertaking. In fact, as a reading of the assessment order; the penalty order; and the impugned order reveal, the Revenue itself claims of the said loss/expenses as not 'derived' from the industrial activity, so that it is not to be considered while computing the profit of the eligible undertaking. This is precisely what the assessee has done, excluding the same. The disallowance, it appears, has been effected on account of a

misunderstanding of the speculation business yielding an income, in which case the profit of the eligible undertaking would be less than the aggregate (consolidated) profit of the assessee-company. The facts are admitted, and the Id. Departmental Representative (DR) could not rebut any of the said contentions by the Id. AR, which are even otherwise borne out by the record. Accordingly, I find no merit whatsoever in the Revenue's case, and direct for the deletion of the penalty. I decide accordingly for both the years; the facts for AY 2009-10 being the same (refer PB pg. 10).

10. In the result, the assessee's appeals are allowed.

Order pronounced in the open Court on 05.04.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Dated:05.04.2018

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Copy of the order forwarded to:

- (1) M/s Shiva Mint Industries, Jammu (J&K)
- (2) The Dy. CIT, Circle-1, Jammu
- (3) The CIT(A)-1, Amritsar
- (4) The CIT concerned.
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order