

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA Nos.65 & 66/Chd/2011

(Assessment Years: 2004-05 & 2005-06)

Vardhman Textiles Ltd.
Chandigarh Road,
Ludhiana

Vs.

The Asst. CIT
Circle-1,
Ludhiana

PAN: AABCM4692E

ITA No. 285/Chd/2011

(Assessment Year: 2005-06)

The ACIT
Circle-1
Ludhiana

Vs.

Vardhman Textiles Ltd.
Chandigarh Road
Ludhiana

(Appellant)

(Respondent)

Assessee by : Shri. Subhash Aggarwal
Department by : Shri. Jagdeep Goyal

Date of hearing : 20/06/2018
Date of Pronouncement : 11/07/2018

ORDER

Per Sanjay Garg, Judicial Member:

These appeals have been preferred by the assessee agitating against the levy of penalty by lower authorities under section 271 (1)(c) of the Act.

2. Ld. Counsel for the assessee while inviting our attention to the relevant issues in relation to which the impugned penalty was levied in relation to A.Y. 2004-05, has submitted that the Assessing Officer had made disallowance and consequential additions to the income of assessee on the following issues:

1. Disallowance of Foreign traveling expenses
2. Disallowance of exemption under section 10B on interest from banks, rental income and commission income

3. The Ld. Counsel for the assessee has invited our attention to the order of the Tribunal dt. 04/05/2018 passed in ITA No. 681/Chd/2007 and has submitted that for the year under consideration for A.Y. 2004-05 quantum appeal of the

assessee in ITA No. 981/Chd/2008 has been decided wherein the Tribunal has set aside the issue relating to the deduction claimed on account of interest from Banks, disallowance of Rent and disallowance of commission income out of exemption claimed under section 10B, to the file of the AO. However the disallowance of 50% of expenditure in relation to Foreign Travelling Expenses of the Managing Director and entire expenditure on treatment of his wife has been upheld by the Tribunal. Ld. Counsel for the assessee in this respect has invited our attention to page 36 of the order.

4. So far as the issues in relation to which the matter has been set aside to the file of the AO is concerned, there are no addition subsisting on this issue as on this day. Since the disallowance / addition at this stage as have ceased so to exist hence consequential penalty has no leg to stand and accordingly the penalty levied in respect of disallowance made on account of interest from banks, rent and commission income is ordered to be deleted. However it is made clear that if in the set aside proceeding, any disallowance or addition is made in this respect and the AO is of the view that penalty proceeding are attracted he will be at liberty to initiate the same.

5. So far as the disallowance in respect of foreign travelling expenses is concerned, we find that the 50% of the expenditure of foreign travelling expenses of the Director and employees of the company has been made on adhoc basis. In our view the aforesaid disallowance does not attract rigorous penalty provisions under section 271(1)(c) of the Act.

6. So far as the disallowance of foreign travelling expenses of wife of the Managing Director is concerned, though it was the case of the assessee before the lower authority that the wife of the Managing Director of the company accompanied him for helping and assisting the MD for procuring the business for the company and even that the company had already passed a resolution allowing the wife of the Managing Director to accompanying him. However the assessee could not furnish necessary evidence in this respect during the quantum proceedings. However at this stage, Mr. Aggarwal the Ld. Counsel for the assessee, has stated that the Board Resolution was passed by the company. He has relied upon the copy of the Board Resolution in this respect. After considering the submission and over all facts and circumstances of the case, we are of the view that though the disallowance has been confirmed by the

Tribunal in respect of travelling expenses of the wife of the MD, yet, so far as the penalty proceeding under section 271(1)(c) are concerned, it is not a case of furnishing of inaccurate particulars of income or concealment of income. It is a case of claim of expenditure on the ground that wife of MD had accompanied him for business purposes of the company and the company had also authorized the MD to take his wife on foreign tour. Though the Ld. AO made the disallowance holding that the said expenditure could not be said to be incurred solely for the business of the assessee, however, as discussed above, it is not a case of concealment of income or furnishing of inaccurate particulars of income. In view of the above, the penalty levied under section 271(1)(c) of the Act on account of disallowance of foreign travelling expenses of the MD, employees as well as wife of the MD is order to be deleted.

7. Coming to the appeal in ITA No. 66/Chd/2011 for A.Y. 2005-06, Ld. Counsel for the assessee has stated that the issues relating to penalty levied under section 271(1)(c) of the Act are identical to that for A.Y. 2004-05. He has further submitted that the issues of such disallowance have already been set aside by the Tribunal to the file of the AO. Further that the issue of disallowance of Foreign Travel Expenses is identical as discussed above while adjudicating the issue of levy of penalty for A.Y. 2004-05.

8. In view of our findings given while deciding the appeal of the assessee in ITA No. 65/Chd/2011 impugned penalty levied in this case is also ordered to be deleted on similar directions.

9. This appeal of the assessee is allowed.

10. The next appeal is ITA No. 285/Chd/2011. The department has come up in this appeal agitating the action of the Ld. CIT(A) in deleting the penalty levied under section 271(1)(c) of the Act on account of disallowance of deduction claimed by the assessee in respect of sales tax subsidy. At the outset the Ld. Counsel of the assessee has submitted that disallowance made by the lower authorities in respect of sales tax subsidy has been deleted treating the same as capital receipt. In view of this the very basis on which impugned penalty was levied has ceased to exist, hence the impugned penalty levied by the AO is not sustainable.

11. The second issue upon which the penalty has been levied is regarding the disallowance of claim deduction under section 10B and 80IB on miscellaneous income.

12. The Ld. Counsel for the assessee inviting our attention to the page 11 to 13 of the decision of the Tribunal in respect of quantum proceedings, has submitted that the issues relating to which the quantum addition were made, has been decided by the Tribunal in favour of the assessee. In view of this the impugned penalty levied on this issue is not sustainable.

13. In the result there is no merit in the appeal of the Revenue and the same is accordingly dismissed.

Order pronounced in the open Court.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 11/07/2018

AG

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER