

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.2938 and 2939/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Hindumal Balmukund
Investment Co. Pvt. Ltd.,
Lohia Jain House,
Bhandarkar Road,
Pune – 411 004
PAN : AAACH4226Q

.....अपीलार्थी/Appellant

Vs.

DCIT, Circle-11, Pune

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nitin Rander
प्रत्यर्थी की ओर से / Respondent by : Ms. Sabana Parveen

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| सुनवाई की तारीख / Date of Hearing : 10.10.2018 | घोषणा की तारीख / Date of Pronouncement: 10.10.2018 |
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are two appeals filed by the Assessee against the separate orders of CIT(A)-1, Pune, commonly dated 30-11-2016 involving Assessment Years 2010-11 & 2011-12.

2. The common issue raised in these two appeals relate to confirming of penalty levied by the AO u/s.271(1)(c) of the Act by the CIT(A). Therefore, we proceed to adjudicate these appeals in this composite order. For the sake of facts, we shall take the appeal ITA No.2938/PUN/2016 for the A.Y. 2010-11 as standard one.

3. Briefly stated relevant facts of the assessee include that the assessee is a company engaged in the business of Builders and Developers, operating a business Centre and IT park and trading in shares. Assessee filed the return of income declaring total income of Rs.1,51,06,479/-. Assessee filed the return of income on 15-10-2010 declaring total income of Rs.1,51,06,479/- after claiming deduction of Rs.1,51,06,508/- u/s.80IA(4)(iii) of the Act. AO noticed that as per completion certificate issued by the PMC on 29-03-2006, only 7 units have been completed. The remaining units were been completed by 07-11-2007. There is no fresh approval obtained by the assessee for delay of more than one year. Assessee has given 7 units on rent to Iflex Solutions Ltd. and 7 units to IIFL Reality Ltd. AO opined that each unit has to be allocated to each distinct party as per the condition mentioned in Industrial Park Scheme 2002 unit which means separate and distinct entity for the purpose of one or more State or Central tax laws. However, the assessee has given its park for two entities only. Assessee submitted its elaborate submissions and relied on various decisions apart from its own case for the A.Y. 2009-10 where deduction u/s.80IA(4) was allowed for the first time. Rejecting the explanation as well as the decisions relied on by the assessee, the AO denied claim made by the assessee u/s.80IA(4) of the Act. Penalty proceedings u/s.271(1)(c) of the Act were initiated on the assessee for furnishing inaccurate particulars of income and eventually levied penalty of Rs.51,34,702/-.

Similarly, penalty of Rs.26,22,143/- was levied by the AO for the A.Y. 2011-12.

The above facts indicate that assessee made a claim for the first time in the A.Y. 2009-10. After due verification of the claim in the A.Y. 2009-10, the same was allowed. However, in the A.Yrs. 2010-11 and 2011-12, the allowability of the claim was again scrutinized by the AO and the same was disallowed by levying penalty. In the First Appellate Proceedings, the CIT(A) confirmed the penalty for both the assessment years. Aggrieved with the same, the assessee filed the present appeals before the Tribunal.

4. At the outset, Ld. Counsel for the assessee brought our attention to the order of Tribunal in the assessee's own case in ITA Nos. 266 & 267/PUN/2015 order dated 24-08-2018 and mentioned that the quantum additions were deleted by the Tribunal on this very issue, therefore, the penalties arising thereof shall not survive. He therefore prayed for deletion of the penalties in both the assessment years under consideration.

5. We heard both the sides on this limited issue of levying penalty u/s.271(1)(c) of the Act, perused the orders of the Revenue and the order of Tribunal (supra) deleting the quantum additions on technical grounds. We therefore, proceed to extract the finding of the Tribunal below for the sake of completeness :

“6. We heard both the parties on this legal issue of applicability of the ratio of the binding judgment of Hon'ble Jurisdiction High Court in the case of CIT Vs. Paul Brothers (supra). The said judgment is relevant for the following proposition :

*“6. Either in [section 80HH](#) or in [section 80J](#), **there is no provision for withdrawal of special deduction for the subsequent years for breach of certain conditions. Hence unless the relief granted for the assessment year 1980-81 was withdrawn, the Income-tax Officer could not have withheld the relief for the subsequent years.**”*

From the above, it is evident that unless the relief claimed in the first year of undertaking is withdrawn, the AO cannot withhold the relief for the subsequent years. In the present case, though an attempt is made to withdraw the claim of

deduction through the invoking of the provisions of section 148 of the Act, the same did not fructify for one reason or the other and the judgment of the Hon'ble High Court in the writ proceedings evidences the same. In effect, the claim of the assessee u/s.80IA(4) of the Act stands allowed in the first year of undertaking.

Considering the fact that the same is allowed in the first year of undertaking, the AO cannot withdraw the deduction when the facts are identical. Therefore, we are of the opinion that the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Paul Brothers (supra) stands applicable to the facts of the present case legally.

7. Further, for commenting our view on the issue, we also perused the judgment in the case of CIT Vs. Western Outdoor Interactive Pvt. Ltd. reported in 349 ITR 309 (Bom.) wherein the Hon'ble High Court held as under:

*"6) We have considered the submissions. We find that the submissions made by Mr. Pardiwalla on the basis of the decision of this Court in the matter of Paul Brothers (supra) and Director of Information Pvt. Ltd. (supra) merits acceptance. Therefore, in this case, it is not necessary for us to decide whether SEEPZ unit was set up/formed by splitting up of the first unit. In both the above decisions, this Court has held that where a benefit of deduction is available for a particular number of years on satisfaction of certain conditions under the provisions of the Income Tax Act, then unless relief granted for the first assessment year in which the claim was made and accepted is withdrawn or set aside, the Income Tax officer cannot withdraw the relief for subsequent years. More particularly so, when the revenue has not even suggested that there was any change in the facts warranting a different view for subsequent years. **In this case for the assessment years 2000-01 and 2001-02 the relief granted under Section 10A of the Act to SEEPZ unit has not been withdrawn. There is no change in the facts which were in existence during the assessment year 2000-01 vis a vis the claim to exemption under section 10A of the Act. Therefore, it is not open to the department to deny the benefit of Section 10A for subsequent assessment years i.e. assessment years 2002-03 and 2003-04 and 2004-05.** Besides that, on consideration of the facts involved both the Commissioner of Income Tax (Appeals) and the Tribunal have recorded a finding of fact that the SEEPZ unit is not formed by splitting up of the first unit."*

8. Further, in the case of M/s. Ygyan Consulting Pvt. Ltd. Vs. DCIT in ITA No.65/PUN/2015 dated 13-10-2017, the Pune Bench of the Tribunal observed as under :

"6. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The first ground raised in appeal by assessee is with respect to assessee's eligibility for claiming deduction u/s. [10A of the Act](#). It is an undisputed fact that the assessee company was incorporated in the year 1991. The documents on record show that the assessee was granted STPI approval on 30-03-2000. Before grant of approval the assessee could not have claimed deduction u/s. [10A of the Act](#). The ld. AR has stated at the Bar that first year for claiming deduction u/s. 10A was assessment year 2001-02. Though the ld. AR could not place on record assessee's return of income in assessment year 2001-02 and the assessment order for the said assessment year, however, the assessee has furnished a copy of

assessment order for assessment year 2004-05. A perusal of the said assessment order at pages 30 to 40 of the paper book clearly indicate that the assessee has claimed deduction u/s. 10A in respect of profits from STPI unit and the same has been allowed by the Assessing Officer in scrutiny assessment. Once having accepted the claim of assessee, the Revenue cannot question assessee's eligibility for claiming such deduction in subsequent assessment years. The Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Paul Brothers (supra) has observed that there is no provision for withdrawal of special deduction for the subsequent years for breach of certain conditions. Unless the relief ITA No. 65/PUN/2015, A.Y. 2005-06 granted for the initial assessment year is withdrawn, the ITO could not have withheld the relief for the subsequent years.

Thus, in view of the fact that the assessee's claim of deduction u/s. 10A was never questioned by the Revenue in initial assessment year, the Assessing Officer cannot raise question over assessee's eligibility for claiming deduction in any of the subsequent assessment years. The ld. DR has also accepted the fact that in assessment year 2004-05, assessee's claim of deduction u/s. 10A was allowed by Assessing Officer in scrutiny assessment proceedings. Thus, in view of the facts of the case and the law laid down by the Hon'ble Jurisdictional High Court, ground No. 1 raised in appeal by the assessee is allowed.”

Considering the above, we are of the considered opinion, in view of the binding ratio in the case of CIT Vs. Paul Brothers (supra) that the assessee is entitled to relief for both the years on this legal issue alone. Considering the relief granted to the assessee on technicalities, we are opinion that adjudication of the grounds on merits becomes an academic exercise. Accordingly, the relevant grounds are dismissed.”

5.1 Considering the relief granted by the Coordinate Bench of the Tribunal on the quantum additions, we are of the opinion that the penalty levied by the AO in both the assessment years needs to be deleted as the basis for levying the penalty, stands dismissed.

6. Even otherwise also, the assessment orders as well as penalty orders in the years under consideration suffer infirmity. The AO initiated penalty proceedings u/s.271(1)(c) of the Act mentioning that the **“assessee has furnished inaccurate particulars of income”** whereas the penalty is levied mentioning that “the **assessee has committed default** consciously with intention to defraud revenue by **concealing income by furnishing inaccurate particulars of income** within the meaning of section 271(1)(c) of

the I.T. Act, 1961". It is a settled legal proposition that the AO is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty. Considering the binding judgments in the case CIT Vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom.) as well as the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory 359 ITR 565, the penalty levied by the AO is unsustainable in law for both the assessment years.

Therefore, we direct the AO to delete the penalty in both the assessment years. Accordingly, the grounds raised by the assessee in both the assessment are allowed.

7. In the result, both the appeals of the assessee are allowed

Order pronounced on this 10th day of October, 2018.

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 10th October , 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT (Appeals)-1, Pune.
4. आयकर आयुक्त / The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

/ True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.