

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R.KUMAR, AM

आयकर अपील सं./ITA No. 179/CHD/2018

निर्धारण वर्ष / A.Y : 2010-11

M/s Optek Disc Mfg. Co., Village – Kunjhal, Baddi.	बनाम VS	The DCIT, Circle, Parwanoo.
स्थायी लेखा सं./PAN No: AAAF09436G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Arsh Kaushal

राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11.10.2018

उद्घोषणा की तारीख/Date of Pronouncement : 26.11.2018

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 17.01.2018 of CIT(A) Shimla pertaining to 2010-11 assessment year on the following ground :

“1. That the Ld. CIT(A) was not justified in upholding the penalty under section 271(l)(c) on disallowance of deduction u/s 80IC on interest income, by terming the same as settled issue, whereas as per the assessee the issue is still debatable, it is therefore prayed that the orders of authorities below may kindly be set aside.”

2. At the time of hearing, an adjournment application was moved on behalf of the assessee, however considering the fact that it could be decided on the basis of the material available on record, it was rejected. A pass over was given to the ld. AR was to go through the facts.

3. In the second round, ld. AR inviting attention to the record submitted that in the facts of the present case, there was no concealment or filing of inaccurate particulars as all the relevant facts noticed by the AO were available on record and it was a case of bonafide belief of the assessee that it was part of the eligible income. Accordingly, in these circumstances, it was his prayer that penalty is not attracted.

3. The ld. Sr.DR relied upon the order. It was his submission that the claim was contrary to the decision of the Apex Court as held in Liberty India Ltd. Vs CIT 317 ITR 218.

4. We have heard the rival submissions and perused the material on record. We find that in the facts of the present case, the AO in the course of the assessment proceedings noticed that the assessee firm had earned interest income of Rs. 18,76,802/- as interest received on FDRs which had been given as margin money for bank guarantee. The assessee was required to justify the allowability of the claim. The specific explanation of the assessee vide letter dated 16.02.2012 and 13.11.2012 justifying the said claim is extracted hereunder :

"Firm has received interest of Rs. 18, 76.802/- on margin money with banks which is there against LC has opened for purchasing of raw material to produce finished goods. Even the firm has paid interest of Rs. 9348981/- on the loan taken from banks. So the interest received directly connected to the business income and is a business receipt"

Reply dated 30-11-2012

"With reference to your observations of the captioned subject we wish to inform you that during the above financial year the firm has earned interest income on the margin money deposit with the Bank for opening of LC for import of raw material. The above LC's were necessary as without these LC's the raw material could have not been imported and therefore no production could have taken place. Thus the above interest income is inextricably linked with the main business and arises out of the said business only. Further it has been held by the Honorable Supreme Court in the case of Bokoro Steels Ltd. VS CIT 236 ITR 315 , that where the income is inextricably linked with the main business and above out of the said business then the said income has to be treated as Business income. The above judgment has been followed in the following cases to here a few:

- *CIT VS AP Industrial Infra structure Corporation Ltd (1989) 175 ITR 361 (AP)*
- *Triupati Woolen Mills Ltd (1992) ITR 252 (Col)*
- *Tamil Naidu Dairy Development pration Ltd . (1995) 216 ITR 535 (Mad)*

Even in the case of assessee the above interest income on the margin money have been accepted by the department as business income in the earlier assessments u/s 143(3) and hence there cannot be a different view on the above subject during the current year.

5. The assessee's reply, we note was not accepted considering the position of law as laid down by the Court in the case of Pandian Chemicals Ltd. Vs CIT (2003) 262 ITR 278, Cambay Electric Supply Industrial Co. Ltd. V CIT (1978) 113 ITR 84 (S.C) and CIT Vs Raja Bahadur Kamakhaya Narain Singh (1948) 16 ITR 325. Apart from that it was also noticed that the assessee has given as security FDR worth Rs. 2 lacs to the Sales Tax authorities as reflected in the balance sheet. The AO made the addition of Rs. 20,000/- estimating the interest @ 10% leading to the addition of Rs. 20,000/-. On the basis of these two additions, penalty u/s 271(1)(c) of the Act has been imposed which has been confirmed holding that the

explanation offered by the assessee no specific explanation qua the same has been offered.

6. On consideration of the above, we find that in the peculiar facts and circumstances of the present case, penalty u/s 271(1)(c) of the Act cannot be imposed as all relevant facts qua the issues were fully disclosed by the assessee. It is not a case of filing of inaccurate particulars or of concealment as has been held by the Apex Court in the case of Reliance Petroproducts and Price Water Cooper. Considering the explanation filed by the assessee consistently right from the assessment proceedings itself, we are of the view that the assessee admittedly remained under a bonafide belief that the interest accruing from the business activities i.e. maintaining margin money with banks in order to open LC for purchasing material etc. and maintaining FDRs as security with the Sales Tax authorities were inextricable linked to the business of the assessee. The assessee is not shown to be a habitual defaulter. In the absence of any material to the contrary, we find no good reason to disbelieve the explanation of the assessee. On considering the material available on record, penalty u/s 271(1)(c) of the Act, accordingly, is directed to be quashed.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 26.11. 2018.

Sd/-
(डा. बी.आर.आर. कुमार)
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar
ITAT, Chandigarh.