

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

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ITA NO. 812/Chd/2018
निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT C-1(1), Chandigarh	बनाम	M/s Quixotic Healthcare Plot No. 784, Inld. Area II Chandigarh
स्थायी लेखा सं./PAN NO: AAFAQ1947N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Parikshit Aggarwal

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

सुनवाई की तारीख/Date of Hearing : 25/10/2018

उदघोषणा की तारीख/Date of Pronouncement : 18/12/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M:

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A)-1, Chandigarh dt. 22/03/2018.

2. In the present appeal Revenue has raised the following effective grounds:

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs. 27,28,890/- on the confirmed addition on account of restricting the benefit of deduction claimed by the assessee under section 80-IC of the Income Tax Act, 1961 to 25% as against 100% deduction as the assessee had failed to discharge its liability to furnish its true and correct particular of income while filing the return of income.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs. 27,28,890/- on the confirmed addition on account of restricting the benefit of deduction claimed by the assessee under section 80-IC of the Income Tax Act, 1961 to 25% as against 100% deduction when the explanation 1 to section 271(l)(c) shifts the onus/burden of proof on the assessee to establish that the explanation offered was bonafide, which the assessee failed to discharge in this case.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs. 27,28,890/- on the confirmed addition on account of restricting the benefit of deduction claimed by the assessee under section 80-IC of the Income Tax Act, 1961 to 25% as against 100% deduction without appreciating the decisions of the Hon'ble Apex Court in the case of UOI vs Dharmendra Textile (306 ITR 277) & Hon'ble P&H High Court in the case of CIT vs Zoom Communication (P) Ltd (327 ITR 510).*

3. Brief facts of the case are that the assessee claimed 100% deduction u/s 80IC of the Act from the A.Y. 2007-08 by making substantial expansion. After 5 years of claim the assessee once again made substantial expansion and started claiming deduction @100% from 6th year onwards u/s 80IC of the Act. The AO did not allow the assessee the 100% claim of deduction u/s 80IC and restricted the claim from 6th year onwards to 25%. The stand taken by the AO as confirmed in 1st and 2nd appeal. And the penalty proceedings were initiated against the assessee. The AO imposed penalty by making the following observation:

"The assessee's arguments on the quantum addition made in the assessment order are not relevant at this juncture. The issue to be decided in this penalty proceeding is not whether the AO was right in making the addition. Rather the issue is whether penalty is leviable on the assessee for an incorrect claim. With regard to the correctness of the addition, it is pertinent to bring on record that the said addition has been confirmed in the favour of the department by the Ld. CIT(Appeals) as well as the Hon'ble TTAT in the case of the assessee.

4. The Assessing Officer has also held that it is a fact that only a small percentage of the Income Tax Returns are picked up for scrutiny. If the assessee makes a claim which is not incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bonafide, the assessee must be liable to penalty u/s 271(l)(c) of the Act.

5. The Ld. CIT(A) deleted the penalty on the grounds that on this issue the assessee was under a bonafide belief that deduction of 100% is admissible beyond 5 years u/s 80IC and that was the reason it has made investment and expanded its unit. Ld. CIT(A) held that though the AO may be justified in denying the claim of deduction but this issue cannot be a subject for imposing penalty.

6. We have heard arguments of both the parties. The issue of allowability of deduction under section 80IC on substantial expansion had a long history of oscillations gone through various Judicial Authorities. The deduction was allowed and also disallowed by the Revenue at different times and the additions made were confirmed at appellate levels and were deleted by the orders of the Hon'ble High Court of Himachal Pradesh. The order of the Hon'ble High Court has been reversed by the order of the Hon'ble Supreme Court. The assessee has been found to have declared all the details in his return of income while claiming the exemption. Hence in accordance with explanation 1(B) to

section 271(1)(c), since the action of the assessee in claiming the exemption can be considered as a bonafide belief that the assessee is rightly eligible for claim of exemption and hence no penalty can be levied under section 271(1)(c). Keeping in view the totality of the facts and circumstances and the provisions of the Act we hereby decline to interfere with the order of the Ld. CIT(A) in deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act,1961.

7. As a result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court.

Sd/-

संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member
AG
Date: 18/12/2018

Sd/-

डा. बी.आर.आर, कुमार,
(DR. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

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