

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH.H.S.SIDHU, JUDICIAL MEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.2259/DEL/2015
Assessment Year: 2001-02

ACIT Circle – 8 (2) New Delhi	Vs	M/s. Eastern Medikit Ltd 3, G. C. Narang Marg, New Delhi PAN No.AAACE0706G
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Ashima Neb, Sr DR
Respondent by	None

Date of hearing:	21/02/2019
Date of Pronouncement:	21/02/2019

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue preferred against the order of the CIT(A)-14, New Delhi dated 23.01.2015 pertaining to A. Y. 2001-02.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the penalty levied u/s. 271 (1) (c) of the Act amounting to Rs.85.31 lacs.

3. None appeared on behalf of the assessee in spite of notice being served through the DR. We decide to proceed exparte. The DR was heard at length. The DR strongly stated that Mens REA is no more an essential condition for the levy of penalty u/s 271 (1) (c) of the Act. It is the say of the DR that the assessee has claimed deduction u/s 80 IA and 80 HHC of the Act simultaneously which was denied by the Assessing officer while completing the assessment u/s 143 (3) of the Act. The DR further stated that the assessee had intentionally claimed simultaneous deduction and, therefore, levy of penalty is justifiable. The DR placed reliance on the judgment of the Hon'ble Delhi High Court in the case of Zoom Communications Private Limited in ITA No.07/2010.

4. We have carefully perused the orders of the authorities below. In this case the return of income was filed on 30.10.2001 claiming deduction u/s 80 IA and u/s 80 HHC of the Act.

5. During the course of the scrutiny assessment proceedings the assessee filed a revised return for following reasons :-

1. Rebate u/s 80 IA / 80 IB of the Act was calculated by eliminating notional profit earned by unit No.206 (Tool Room) of the assessee company.

2. Rebate u/s 80 HHC of the Act was recalculated unit-wise, eliminating the profit or loss earned by the unit engaged in domestic sale only.

3. Taxable profit for the purpose of Minimum Alternate Tax (MAT) was re-calculated keeping in view the provisions contained under section 115 JB of the Act.

4. The assessee company claimed rebate u/s 80 JJAA of the Act, which was not claimed earlier.

6. While completing the assessment the Assessing Officer reworked the deduction u/s 80 HHC of the Act and reduced the simultaneous claim of deduction u/s 80 IA of the Act.

7. The assessee lost the appeal before the First Appellate Authority, penalty proceedings were separately initiated on the ground that the assessee claimed deduction u/s 80 IA of the Act and simultaneously claimed u/s 80 HHC of the Act without reducing the profit to the extent claimed deduction u/s 80 IA of the Act which resulted in allowance of double deduction on same profit. The Assessing Officer was convinced that the assessee has concealed particulars of income, therefore, invoking explanation-1 to u/s 271 (1) (c) of the Act penalty was levied at Rs.85,13,868/-.

8. The assessee carried the matter before the CIT(A) and strongly contended that it has not claimed simultaneous deduction intentionally and therefore, it is not a fit case for levy of penalty. Strong reliance was placed on the judgment of Hon'ble Supreme Court in the case of Reliance Petro Projects Private Limited reported in 322 ITR 158. After considering the facts and the submission and drawing support from various judicial decision the CIT(A) deleted the penalty so levied. The relevant findings of the CIT (A) read as under :-

“In the case under consideration. It is an undisputed fact that the issue of simultaneous claim of deductions u/s 80 HHC and 80 IA was a debatable issue. In the case of ACIT

Vs. Rogini Garments (Supra), the Hon'ble Special Bench of ITAT held that literal interpretation of the provisions of Section 80 IA (9) is that relief u/s 80 IA should be deducted from the profit and gain of the business before computing relief under section 80 HHC of the Act. Subsequently, the Hon'ble High Court of Madras, in the case of SCM Creations reported in 304 ITR 319 (Mad.), held that relief under section 80 IA of the Income Tax Act, 1961 should not be deducted from profits and gain of business before computing relief under section 80 HHC. After this decision of the Hon'ble Madras High Court in the case of SCM Creations (supra), Hon'ble ITAT, Special Bench, Delhi in the case of ACIT Vs. Hindustan Mint & Agro Products Pvt. Ltd. (2009) 119 ITD 107 held that deduction to be allowed under provisions of Chapter VI-A with heading 'C' (section 80 HHC, etc.) is to be reduced by an amount of deduction allowed under section 80 IA/ 80IB of the Income Tax Act, 1961. The aforesaid decision of the special bench of Hon'ble ITAT was affirmed by Hon'ble High Court of Delhi in the case of Great Eastern Exports vs. CIT (Supra) and it was held that for the purpose of computing deduction u/s 80HHC, the deduction already allowed u/s 80IA had to be reduced from the profits of the business. Similar view was taken by the Hon'ble Kerala High court in the case of Olam Exports (India Ltd.) vs. CIT 229CTR(Ker.)206. However, the Hon'ble High Court of Bombay in the case of Associated Capsules Pvt. Ltd. vs. DCIT, 237CTR, 408 held that the amount of deduction u/s 80IA is not to be reduced in computing the exports profit for the purpose of deduction u/s 80HHC. Thus, there was divergence of decisions on the issue of simultaneous claim of deduction u/s 80HHC and 80IA and the issue was a debatable issue involving substantial question of law. Therefore, in my opinion, penalty u/s 271(1)(c) is not leviable in this case. Reliance in this regard is also placed on the

decision of Hon'ble ITAT Ahmadabad in the case of DCIT vs. Ornet Intermediates Pvt. Ltd. (ITA No.477 and 478/AHD/2007) wherein it was held that penalty u/s 271(1)(c) is not leviable in the case of debatable issue.

9. A perusal of the above clearly shows that the claim of the assessee is a highly debatable issue as there are conflicting decisions of High Courts and the Tribunal. Though the jurisdictional High Court of Delhi is against the assessee but that is relevant for quantum proceedings. Findings in quantum proceedings may be relevant but are not conclusive or determinative of the penalty proceedings. The reliance placed by the Ld. DR on the judgment of the Hon'ble Delhi High Court in the case of Zoom Communications Private Limited (supra) is misplaced because the said judgment was delivered on different set of facts.

10. Considering the facts of the case in hand in totality we do not find any reason to interfere with the findings of the CIT (A). The appeal filed by the revenue is accordingly dismissed.

11. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 21.02.2019.

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 21.02.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Date of dictation	21.02.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	21.02.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	