

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.S.SAINI, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.266(Asr)/2018
Assessment Year:2010-11

M/s. HPCL Mittal Pipelines Ltd., Vs. Asst. CIT,
Village:- Phulokhari, Circle (1),
Taluka Talwandi Saboo, Bhatinda-151005.
Dist- Bathinda, Punjab-151301.

[PAN:AABCH 9865Q]

(Appellant)

(Respondent)

&

ITA Nos.267 & 269(Asr)/2018
Assessment Years:2010-11 & 2011-12

M/s. HPCL Mittal Energy Ltd., Vs. Asst. CIT,
Village:- Phulokhari, Circle (1),
Taluka Talwandi Saboo, Bhatinda-151005.
Dist- Bathinda, Punjab-151301.

[PAN:AABCG 5231F]

(Appellant)

(Respondent)

Appellant by: Sh. Gaurav Jain & Deepesh Jain (Ld. CAs)

Respondent by: Smt. Parwinder Kaur (Ld. CIT-DR)

Date of hearing: 12.02.2019

Date of pronouncement: 14 .02.2019

ORDER

PER N.K.CHOUDHRY, JM:

These appeals have been preferred by the assessee against the common order dated 26.2.2018 passed by the Ld. CIT(A), Bhatinda u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. As the issues involved in all the three appeals are identical and similar therefore, for the sake of convenience and brevity are taken simultaneously for adjudication by this composite order.

3. The only issue involved in the instant appeals relates to imposition of penalty which has been affirmed by the Ld. CIT(A). At the outset, it was stated by Ld. AR in the instant cases, the AO while initiating penalty proceedings recorded a satisfaction qua concealment of particulars of its income, however, while issuing a notice u/s 274 of the Act, mentioned both limbs i.e. concealment of income/furnishing of inaccurate particulars of income and finally without specifying the limb, imposed the penalty for concealment/furnishing inaccurate particulars of income, which goes to show that while initiating the penalty, issuing of notice u/s 274 of the Act and levying the penalty, the AO was not sure under which limb the penalty was attracted and imposable. In the similar facts and circumstances, while analyzing various decisions rendered by Hon'ble Karnataka High Court in 'Manjunatha Cotton and Ginning Factory' 359 ITR 565 (Kar), Karnataka, 'CIT Vs Manu Engineering Works (1980) 122 ITR 306 (Guj), and 'Padma Ram Bharali Vs CIT', co-ordinate bench at Amritsar in the Assessee's own cases (third Member's cases) 'HPCL Mittal Energy Ltd Vs Addl CIT' & 'HPCL Mittal Pipeline Ltd., Vs Addl CIT' (ITA Nos. 554 & 555/Asr/2014 and 510 & 556/Asr.2014 Assessment Years 2008-09 & 2009-10, order dated 7.5.2018), ordered for deletion of the penalty and the consequential effect to the third Member decision was given by the Co-ordinate Bench in the same ITA Nos. vide order dated 7.5.2018 and therefore the instant cases are squarely covered by the decision of the tribunal (third member's cases) .

4. On the contrary, the Ld. CIT(DR) fairly submitted that although the facts of Third Member's cases are identical and similar, however every case is distinct one and must be decided in accordance with peculiar facts and circumstances of the case and the authorities below were right in initiating penalty proceedings as well as imposing the penalty and therefore, the orders under challenge does not suffer from any perversity, illegality or impropriety.

5. Having heard the parties at length and perused the orders passed by the authorities below and the material available on record. For deciding the instant issue, relevant part of the decision of the tribunal in Third Member's cases(supra) is crucial and therefore reproduced herein below for the sake of brevity and ready reference :-

*"In view of the foregoing discussion, I am satisfied that the penalty was wrongly imposed and confirmed in all the four appeals under consideration. I agree with the Ld. JM in striking down all the penalty orders. The question posed is, therefore, answered in affirmative to the effect **that where the satisfaction of the AO while initiating penalty proceedings u/s 271(1)(c) I.T. Act, 1961 is with regard to the alleged concealment of income by the assessee, whereas the imposition of penalty is for 'concealment/ furnishing inaccurate particulars of income', the levy of penalty is not sustainable.**"*

5.1 Though we are in agreement with the Ld. D R that every case is distinct one and must be decided in accordance with peculiar facts and circumstances of the case, however it is well settled law that litigation must come to an end and consistency is imperative to be observed. Question qua taking a contrary view to judgments of co-ordinate Benches, the law is well settled by the Apex Court in the case of the S.I. Rooplal And Anr Vs Lt. Governor through Chief Secretary Delhi & Ors. (Appeal Civil) 5363-64 of 1997 Date of Judgment: 14/12/1999 {1999 SUPP (5) SCR 310}), relevant part of which is reproduced herein below:

" At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could

have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of [Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel](#), [1968] 1 SCR 455 while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai's case and of Macleod, C.J., in Haridas `s case did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J. observed in [Lala Shri Bhagwan and Anr, v. Shri Ram Chand and Anr](#).

"It is hardly necessary to emphasis that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re- considered, lie should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

We are indeed sorry to note the attitude of the tribunal in this case which, after noticing the earlier judgment of a coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the tribunal in this case, a lot of valuable time of the Court is wasted and parties to this case have been put to considerable hardship.

5.2 In our considered view, the tribunal in third member's cases dealt with exactly identical and similar issue as involved in the instant appeals and even otherwise we did not find any material contrary or any circumstance which differs these case from the Third Member's cases (supra) decided at Amritsar Bench, therefore we respectfully following the dictum of Apex Court laid down in S.I. Rooplal and Anr Vs Lt. Governor through Chief Secretary Delhi & Ors.(supra) qua following the principles of judicial discipline, rules of precedents and to maintain consistency in the decisions are inclined to follow the decision of co-ordinate bench rendered in assessee's own cases and therefore do not have any hesitation to delete the penalty imposed in these cases. Consequently orders impugned herein are set aside and penalty deleted.

6. In the result, all the appeals stands allowed.

Order pronounced in the open Court on 14.02.2019.

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 14.02.2019

Rkk

Copy of the order forwarded to:

- (1) (a) M/s. HPCL Mittal Pipelines Ltd (b) M/s HPCL Energy Ltd.
Village:- Phulokhari, Taluka Talwandi Saboo,
Dist- Bathinda, Punjab-151301
- (2) The Asst. CIT, Circle-(1), Bathinda
- (3) The CIT(A), Bathinda
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

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