

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 824/JP/2018
निर्धारण वर्ष/Assessment Year : 2011-12.

M/s. Genus Innovation Ltd., SPL-2B, RICO industrial Area, Sitapura, Tonk Road, Jaipur.	बनाम Vs.	The Dy. Commissioner of Income Tax, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCG 4460 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)

राजस्व की ओर से / Revenue by: Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 18.09.2019.

घोषणा की तारीख / Date of Pronouncement : 19/09/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is against the order dated 22.12.2017 of Id. CIT (Appeals), Kota arising from the penalty order passed under section 271(1)(c) of the IT Act for the assessment year 2011-12. There is a delay of 86 days in filing the present appeal. The assessee has filed an application for condonation of delay along with the medical record of the A/R of the assessee to explain the cause of delay.

2. I have heard the Id. A/R of the assessee as well as the Id. D/R and carefully perused the medical record produced in support of the application for condonation of delay. I am satisfied that the assessee was having a reasonable cause for not presenting the appeal within the period of limitation. Accordingly the delay of 86

days in filing the present appeal is condoned. The assessee has raised the following grounds of appeal :-

- “ 1. The Id. CIT (Appeals) erred in law and on facts on both while not allowing the appeal filed by the assessee.
2. The Id. CIT (Appeals) erred in law and on facts in not considering the written submissions and relevant evidences filed by the assessee during the hearing of appeal in regard to impose the penalty, by alleging that the assessing officer imposed the penalty after clear provisions contained in section 271(1)(c).
3. Any other ground of appeal which may be raised during the course of hearing of appeal.”

3. The Id. A/R of the assessee has submitted that the assessee claimed deduction in respect of advance payment of sales tax/vat under section 43B which was disallowed by the AO. Though the matter was carried to this Tribunal, however, this Tribunal in the quantum appeal has confirmed the disallowance made by the AO under section 43B in respect of the advance payment of Sales tax/vat. The Id. A/R has pointed out that the Tribunal while deciding the issue against the assessee has followed the decision of Delhi Benches of the Tribunal in case of Maruti Udyog vs. DCIT, 92 ITD 119. However, the said decision has been subsequently reversed by the Hon'ble Delhi High Court vide judgment dated 07.12.2017 in ITA No. 31/2005. Even otherwise, the claim of deduction in respect of the advance payment of Vat under section 43B is a debatable issue and, therefore, it was a bonafide claim of the assessee which was disallowed by the AO and consequently the penalty proceedings under section 271(1)(c) are not attracted on the issue of disallowance of claim being debatable issue. In support of his contention, he has relied upon the decision of

Hon'ble Supreme Court in case of CIT vs. Modipon Ltd. 400 ITR 1 (SC) as well as the decision in case of CIT vs. Reliance Petroproducts Ltd. 322 ITR 158 (SC). Thus the Id. A/R has submitted that when the claim in respect of advance payment of Vat is a bonafide claim, then the disallowance of the same by the AO would not attract the penalty under section 271(1)(c).

4. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the disallowance of claim of the assessee has been confirmed by this Tribunal in the penalty proceedings, therefore, it is a clear case of furnishing inaccurate particulars of income by making a wrong claim.

5. Having considered the rival submissions as well as the relevant material on record, there is no dispute that the penalty under section 271(1)(c) has been levied by the AO in respect of disallowance of claim of advance payment of VAT. The assessee claimed the said amount under section 43B which provides that the claim to be allowed only on the payment and not on accrual basis. Though the said disallowance by the AO has been upheld by this Tribunal, however, it is clear from the decision of the Tribunal in quantum proceedings that the Tribunal has followed the decision of Delhi Benches of the Tribunal in case of Maruti Udyog vs. DCIT (supra) which was subsequently reversed by the Hon'ble Delhi High Court (supra). Even the Hon'ble Supreme Court in further appeal in case of CIT vs. Modipon Ltd (supra) has decided this issue in favour of the assessee and against the revenue in para 8 to 13 as under :-

"8. We have considered the submissions made on behalf of the parties. Notwithstanding the acceptance by the Revenue of the practice adopted by the assessee-Modipon Ltd. in all the assessment years except for the ones under dispute as enumerated above and the absence of any challenge to the decisions

of the Delhi and the Punjab & Haryana High Courts, the present challenge would still be entertainable so long as it discloses a substantial question of law or an issue impacting public interest or the same has the potential of recurrence in future. The Revenue cannot be shut out from the present proceedings merely because of its acceptance of the practice of accounting adopted by the assessee or its acceptance of the decision of the two High Courts in question. An adjudication of the question(s) arising cannot be refused merely on the above basis. We will, therefore, have to proceed to answer the merits of the challenge made by the Revenue in the present appeals.

9. Deposit of Central Excise Duty in the PLA is a statutory requirement. The Central Excise Rules, 1944, specify a distinct procedure for payment of excise duty leviable on manufactured goods. It is a procedure designed to bring in orderly conduct in the matter of levy and collection of excise duty when both manufacture and clearances are a continuous process. Debits against the advance deposit in the PLA have to be made of amounts of excise duty payable on excisable goods cleared during the previous fortnight. The deposit once made is adjusted against the duty payable on removal and the balance is kept in the account for future clearances/removal. No withdrawal from the account is permissible except on an application to be filed before the Commissioner who is required to record reasons for permitting an assessee to withdraw any amount from the PLA. Sub-rules (3), (4), (5) and (6) of Rule 173G indicates a strict and vigorous scrutiny to be exercised by the central excise authorities with regard to manufacture and removal of excisable goods by an assessee. The self removal scheme and payment of duty under the Act and the Rules clearly shows that upon deposit in the PLA the amount of such deposit stands credited to the Revenue with the assessee having no domain over the amount(s) deposited.

10. In *CIT v. Pandavapura Sahakara Sakkare Karkhane Ltd.* [1992] 198 ITR 690 (Kar.) and *CIT v. Nizam Sugar Factory Ltd.* [2002] 120 Taxman 378/253 ITR 68 (AP), cited at the Bar, the High Courts of Karnataka and Andhra Pradesh respectively had occasion to consider as to whether the amounts credited to the Molasses Storage Fund out of the sale proceeds of molasses received by the assessee constitute taxable income of the assessee. Under the scheme, the assessee had no control over the amounts deposited in the fund and the assessee was also not entitled to withdraw any amount therefrom without the approval of the authorities. Further the amount deposited could be utilized only for the purpose specified. In those circumstances, the High Court held and in our view correctly, that the deposits made, though a part of the sale proceeds of the assessee, did not constitute taxable income at the hands of the assessee. We do not see why the same analogy would not be applicable to the case in hand.

11. The Delhi High Court in the appeals arising from the orders passed by it has also taken the view that the purpose of introduction of Section 43B of the Central Excise Act (Sic. Income-tax Act) was to plug a loophole in the statute which permitted deductions on an accrual basis without the requisite obligation to deposit the tax with the State. Resultantly, on the basis of mere

book entries an assessee was entitled to claim deduction without actually paying the tax to the State. Having regard to the object behind the enactment of Section 43B and the preceding discussions, it would be consistent to hold that the legislative intent would be achieved by giving benefit of deduction to an assessee upon advance deposit of central excise duty notwithstanding the fact that adjustments from such deposit are made on subsequent clearances/removal effected from time to time.

12. The above discussions, coupled with the peculiar features of the case, noticed above i.e. consistent practice followed by the assessee and accepted by the Revenue; the decisions of the two High Courts in favour of the assessee which have attained finality in law; and no contrary view of any other High Court being brought to our notice, should lead us to the conclusion that the High Courts were justified in taking the view that the advance deposit of central excise duty constitutes actual payment of duty within the meaning of Section 43B of the Central Excise Act (Sic. Income-tax Act) and, therefore, the assessee is entitled to the benefit of deduction of the said amount.

13. We, therefore, dismiss the appeals and affirm the orders of the High Courts of Delhi and Calcutta impugned in the present appeals.”

From the above facts and circumstances as well as the decision of the Hon'ble Supreme Court, it is clear that the claim of the assessee was a bonafide claim and rather an allowable claim. Therefore, even if the said claim was disallowed by the AO, it would not amount to furnishing inaccurate particulars of income or concealment of particulars of income to attract the provisions of section 271(1)(c). The Hon'ble Supreme Court in case of CIT vs. Reliance Petroproducts Ltd.(supra) has held that a mere disallowance of the claim of expenditure, details of which has been furnished by the assessee would not be viewed as furnishing of inaccurate particulars of income or concealment of income. Accordingly, the penalty levied under section 271(1)(c) of the Act is deleted.

6. Though the Id. A/R has also challenged the penalty order on the ground of limitation, however, in view of the finding on the merits of the appeal, I do not propose to go into the issue of validity of penalty order.

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

Order is pronounced in the open court on 19/09/2019.

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 19/09/2019.

Das/

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

1. The Appellant- M/s. Genus Innovation Ltd., Jaipur.
2. The Respondent – The DCIT Circle-2, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 824/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar