

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

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA Nos. 298 & 299/CHD/2019

निर्धारण वर्ष / Assessment Years : 2012-13 & 2014-15

M/s Shivam Cotspin Limited, Vilalge Kheri, Kala Amb, Trilokpur Road, Sirmour Himachal Pradesh	बनाम	The DCIT, Circle, Parwanoo
स्थायी लेखा सं./PAN NO: AAJS9111L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rohit Goel, CA
राजस्व की ओर से/ Revenue by : Shri Arvind Sudershan, Sr. DR
सुनवाई की तारीख/Date of Hearing : 28.11.2019
उद्घोषणा की तारीख/Date of Pronouncement : 28.11.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the common order dated 30.01.2018 of the Commissioner of Income Tax (Appeals), Shimla. [hereinafter referred to as 'CIT(A)'].

2. Since the issue involved regarding the levy of penalty u/s 271 (1)(c) Income Tax Act, 1961 (in short 'the Act') in both the appeals is

identical, hence, these were heard together and are being disposed off by this common order.

3. Both the appeals are time barred by 344 days. Separate applications for condonation of delay have been filed which are further supported with the Affidavit of the Director of the company namely Shri Pawan Singla, wherein, it has been deposed that earlier the matters were entrusted to another Chartered Accountant and the assessee company was under bonafide belief that the appeals have been filed and will be prosecuted by the said Chartered Accountant engaged by the Company. However, when the assessee company contacted the present C.A. namely Shri Rohit Goel, then it came to know that inadvertently the appeal remained to be filed in the above cases. That the delay in filing the captioned appeals is not intentional. That the assessee contested all around this matter. That even the quantum appeals travelled up to the level of the High Court and there was no reason with the assessee not to file the present appeals against levy of penalty u/s 271 (1)(c) of the Act. The Ld. counsel has further submitted that even in the quantum appeal, part relief has been granted to the assessee.

Considering the above submissions, the delay in filing the present appeals is hereby condoned.

4. Now coming to the merits of the case, wherein, identical contentions have been made in both the appeals, firstly, in respect of

the interest received on delayed payments by the assessee and further claimed as exempt u/s 80 IC of the I.T. Act. The second issue on which the addition was made and further confirmed is regarding the interest on FDRs.

5. So far as the addition made by the Assessing Officer in respect of delayed payment of interest is concerned, the Ld. counsel has invited our attention to the order of the Hon'ble jurisdictional High Court of Himachal Pradesh in the own case of the assessee dated 19.3.2019 passed in ITA No. 5 of 2018 relating to the quantum proceedings, whereby, the Hon'ble High Court has decided the issue regarding the allowability of interest on delayed payment in favour of the assessee vide para 4 of the said decision. Since the quantum additions on this issue stand deleted, hence, the very basis for levy of penalty on this issue has ceased to exist, hence, the penalty levied by the Assessing Officer u/s 271 (1)(c) of the Act in respect of additions made in respect of claim of delayed payment is not sustainable in the eyes of law and the same is accordingly ordered to be deleted.

6. So far as the claim of interest on FDRs is concerned, though the issue in the quantum proceedings has been decided against the assessee, however, it has been submitted before us that he said claim was made by the assessee under bonafide belief. That there was neither any intention of the assessee to furnish inaccurate particulars of income nor to

conceal its income . The Ld. Counsel has further submitted that the FDRs were made with the bank as a guarantee for obtaining loan for working capital upon which the assessee in turn has paid interest to the bank which has also been allowed as expenditure to the assessee.

We are of the view that the assessee under bonafide belief netted the interest received with the expenditure to make a claim u/s 80IC of the Act. However, the said claim of the assessee has not been accepted. In our view, this is not a case of furnishing of inaccurate particulars of income or concealment of income warranting levy of penalty u/s 271 (1)(c) of the Act. It has been settled time and again that each and every disallowance made by the Income Tax Authorities does not ipso facto warrants levy of penalty u/s 271 (1)(c) of the Act.

In view of this, the penalty levied by the Assessing Officer in both these counts is ordered to be deleted.

7. At this stage, the Ld. Counsel for the assessee has submitted that for the assessment year 2014-15, the penalty has also been levied on account of disallowance claimed by the assessee u/s 80IC on Duty draw back. This issue is settled by the decision of the Hon'ble Supreme Court in the case of 'M/s Liberty India vs CIT' [2009] 317 ITR 218 (SC) vide order dated 31.8.2019. Since the issue was already settled, hence, in our view, there was no justification on the part of the assessee to claim the deduction on duty draw back as exempt u/s 80IC of the Act.

The penalty levied by the Assessing Officer in respect of the claim of duty drawback is, therefore, confirmed.

In view of our findings given above, the appeal of the assessee for assessment year 2012-13 is hereby allowed, whereas, the appeal for assessment year 2014-15 is treated as partly allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Dated : 25.11.2019

“आर.के.”

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial 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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar