

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.40/Nag./2023
(Assessment Year : 2010-11)

ITA no.41/Nag./2023
(Assessment Year : 2011-12)

ITA no.42/Nag./2023
(Assessment Year : 2012-13)

ITA no.43/Nag./2023
(Assessment Year : 2013-14)

Sunita Ashok Bhaiya
Bhaiya Building, Anaj Bazar
Itwari, Nagpur 440 002 PAN – ABQPB2779L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-5, Nagpur

..... Respondent

Assessee by : Ms./Shri Shri Alfiya Rozie
Revenue by : Shri Mrunmay Ramteke

Date of Hearing – 29/05/2024

Date of Order – 29/05/2024

ORDER

PER V. DURGA RAO, J.M.

These four appeals have been filed by the assessee challenging the impugned orders of even date 07/12/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*] for the assessment year 2010-11, 2011-12, 2012-13 and 2013-14.

2. The Registry has pointed out that these appeals are barred by limitation, which are filed belatedly by one day. In our opinion, since the delay being very

minor, hence we are of the opinion that the assessee was prevented by filing the appeal belatedly and the delay is hereby condoned. Now we proceed to dispose off the appeals filed by the assessee on merit.

3. The only issue involved in all the years under consideration is, whether or not the Assessing Officer was justified in levying penalty under section 271(1)(c) of the Act.

4. Since all these appeals pertain to the same assessee involving common issues arising out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal in ITA no.40/Nag./2023, for assessment year 2010-11. The decision so arrived in this appeal, mutatis mutandis, shall be applicable to the other appeals as well.

ITA no.40/Nag./2023
Assessee's Appeal – A.Y. 2010-11

2. The issue raised in this appeal relates to levy of penalty of ₹ 59,160, under section 271(1)(c) of the Act.

3. During the year under consideration, the assessee was carrying on the business of selling rice through milling with the help of system of integrated handling, storage and transportation. According to the assessee, the system of integrated handling, storage and transportation was carried as mentioned in

section 80IB(11a). The assessee filed its return of income electronically on 03/09/2010, declaring income of ₹ 8,32,820. Return of income was processed under section 143(1) on 19/05/2011. Subsequently, notice under section 148 of the Act was issued on 30/03/2015 which was duly served upon the assessee on the same date.

4. For the year under consideration, during the course of assessment proceedings, the Assessing Officer noticed that the assessee claimed deduction under section 80IB (11A) amounting to ₹ 1,91,472, being 25% of income derived from Rice Mill activities. During the course of assessment proceedings, the assessee has been asked to provide relevant documentary proof and explain in unequivocal terms keeping in mind the essence of the wording of the said provisions i.e., Integrated business of handling, storage and transportation of food grains. The assessee has been further asked to explain the nature and activities from procurement stage of paddy, processing and till the selling of rice.

5. The contention of the counsel is considered and is not acceptable as far as the eligibility of the business for deduction is concerned. According to the Assessing Officer, insofar as (11A) is concerned, the amount of deduction in a case of an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or [meat and meat products or poultry or marine or dairy products or | from the integrated business of handling, storage and transportation of foodgrains, shall be eligible.

6. The Assessing Officer further observed that the first one is related to the business of 'processing, preservation and packaging of fruits or vegetables or [meat and meat products or poultry or marine or dairy products'. Since the assessee's business is entirely different, this part of the above said provision does not apply in her case. The second part speaks of integrated business of handling, storage and transportation of foodgrains. Therefore, the Assessing Officer was of the view that the assessee who is engaged in the integrated business of handling, storage and transportation of foodgrains can only be eligible for deduction under section 80IB (11A). As explained, the assessee runs a mill for manufacturing rice. She procures raw materials (paddy) for the purpose of manufacturing rice. Her activity sans the vital elements to construe as 'integrated business of handling, storage and transportation of foodgrains'. Her handling storage and transportation is purely incidental to her rice milling activities. Thus, this part of the section cannot be applied to her business either. The contention of the assessee has been considered but was not acceptable to the Assessing Officer insofar as the eligibility of the business for deduction is considered. Thus, order under section 143(3) r/w section 147 of the Act was passed on 21/03/2016, determining total income of ₹ 10,24,290. The assessee being aggrieved went in appeal before the first appellate authority.

7. The learned CIT(A) confirmed the order so passed by the Assessing Officer by relying upon the decision of the Co-ordinate Bench of the Tribunal in Anurag Radhesham Attal v/s ITO, 158 ITD 867 (Pun.), wherein it has been held that the activities of handling, storage and transportation should be

carried out by the assessee as a composite activity and in an integrated manner and profit earned thereof shall be eligible for deduction under section 80IB(11A) in the prescribed quantum. The learned CIT(A) dismissed the appeal of the assessee by observing as under:-

"6.11 In view of the discussion in preceding paragraphs, the deduction u/s 80IB(11A) is not available to the assessee. The assessee has not carried out any such activities which are part of her earnings, either separately or compositely. The referred activities are neither the business activity of the appellant nor profit is earned therefrom. Therefore, the appellant shall not be eligible for deduction u/s 80IB(11A). The AO is justified in denying the deduction claimed, through his speaking orders. Accordingly, all grounds of appeal are dismissed and addition made at Rs.1,91,472/-, 3,82,197/-, 3,83,418/- and 7,03,874/- for AY 2010-11, 2011- 12. 2012-13 and AY 2013-14 respectively, are confirmed and upheld."

8. Meanwhile, the penalty proceedings under section 271(1)(c) of the Act which was initiated separately by the Assessing Officer while concluding the assessment, the issue of imposition of penalty under section 271(1)(c) of the Act was challenged by the assessee before the learned CIT(A).

9. The learned CIT(A) relying upon the decision of the Hon'ble Delhi High Court in CIT v/s Zoom Communications Pvt. Ltd., 327 ITR 510 (Del.), held as under:-

"6. After taking into consideration, the facts and circumstances of the case, I am satisfied that the assessee has without any reasonable cause furnished inaccurate particulars in respect of deduction u/s.80IB(11A) and rendered herself liable for levy of penalty u/s.271(1)(c) of the Income tax Act, 1961 for the year under consideration. The minimum and maximum penalty leviable in this case is worked out at Rs.59,160/- and Rs.1,77,480/- respectively. I therefore proceed to levy minimum penalty of Rs. 59,160/- u/s.271(1)(c) of the Income tax Act, 1961 which is 100% of tax sought to have been evaded as per calculation given below.

The assessee being aggrieved is in appeal before the Tribunal.

10. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. Before us, the issue for our consideration is, whether or not the Assessing Officer has correctly imposed penalty under section 271(1)(c) of the Act which was confirmed by the learned CIT(A). We find that the assessee had relied upon the Audit Report wherein it was certified that the assessee was engaged in the business of Rice Milling through system of integrated handling, storage and transportation of food grains and hence the assessee is fully relying upon the export's opinion to claim the deduction under section 80IB (11A) of the Act. Insofar as the imposition of penalty under section 271(1)(c) of the Act is concerned, the concealment of particulars of income and/or furnishing of inaccurate particulars of income and making of claim which is not sustainable in law, the claim made in the return of income cannot be held to be furnishing inaccurate particulars and/or concealment of particulars of income. We find that the assessee-company had fully furnished all relevant details of its income and expenditure in its return of income, which were in themselves, not found to be incorrect and, therefore, could not be viewed as inaccurate or concealment. The words used under section 271(1)(c) of the Act are plain and simple, and unless the case of the Assessee is strictly covered by words in this provision, no penalty can be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Merely because the Assessee claimed of deduction of under section 80IB (11A) of the Act which has not been accepted by the Revenue, penalty under section 271(1)(c) of the Act is not attracted. If the contention of the Revenue

is accepted, the Assessee would be liable to be penalized under section 271(1)(c) of the Act in every case where the claim made by the Assessee is not accepted by the Assessing Officer for any reason. In our considered view, this cannot be the intention of the legislature. In view of the forgoing discussion, we are of the opinion that this is not a fit case to impose penalty and consequently we quash the penalty levied under section 271(1)(c) of the Act at ₹ 59,160 by the Assessing Officer which was subsequently confirmed by the learned CIT(A). Accordingly, all the grounds of appeal raised by the assessee for the assessment year 2010-11 are allowed.

11. In the result, appeal filed by the assessee for the A.Y. 2010-11 is allowed.

ITA no.41/Nag./2023 – A.Y. 2011-12

ITA no.42/Nag./2023 – A.Y. 2012-13

ITA no.43/Nag./2023 – A.Y. 2013-14

12. In all the aforesaid appeals, the assessee has raised common issue relating to imposition of penalty under section 271(1)(c) of the Act. We find that since the facts and circumstances of the issue involved in all these appeals are mutatis mutandis identical to the issue decided by us in assessee's appeal being ITA no.40/Nag./2023, for the assessment year 2010-11, vide Para-10 of this order, consistent with the view taken therein, we are of the opinion that this is not a fit case to impose penalty and consequently we quash the penalty levied under section 271(1)(c) of the Act by the Assessing Officer which was subsequently confirmed by the learned CIT(A) for all the assessment year i.e.,

A.Y. 2011-12, 2012-13 and 2013-14. Accordingly, all the grounds of appeal raised by the assessee for the above assessment years are allowed.

13. In the result, appeals filed by the assessee for the A.Y. 2011-12, 2012-13 and 2013-14 are allowed.

Order pronounced in the open Court on 29/05/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 29/05/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur