

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.3820/दिल्ली/2024 (नि.व. 2014-15)
ITA No.3820/DEL/2024 (A.Y.2014-15)

Snigdha Saluja,
C-143, Greater Kailash, Delhi 110048
PAN: ABAPS-1248-P

..... अपीलार्थी/Appellant

बनाम Vs.

Commissioner of Income Tax(Appeals),
National Faceless Appeal Centre,
Circle 30(1), Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Kriti Bindal, Chartered Accountant
प्रतिवादीद्वारा/ Respondent by : Shri Rajesh Tiwari, Sr. DR
सुनवाई की तिथि/ Date of hearing : 12/12/2024
घोषणा की तिथि/ Date of pronouncement: : 27/12/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 11.06.2024, for assessment year 2014-15.

2. This appeal is time barred by 12 days. The assessee has filed an application citing reasons for delay in filing of appeal. The Revenue has not raised any serious objection on delay in filing of appeal. After perusal of application, I am satisfied that the delay in filing of appeal is not intentional. The reason given in application for

delay in filing of appeal appears to be bonafide. Hence, 12 days delay in filing of appeal is condoned and appeal is admitted for adjudication on merits.

3. Ms. Kriti Bindal, appearing on behalf of the assessee submits that the Assessing Officer (AO) has levied penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') read with Explanation 1. The notice u/s. 271(1) r.w.s 274 of the Act dated 30.12.2016 was served on the assessee. A perusal of notice (at page no. 1 of the paper book) would show that both limbs of section 271(1)(c) of the Act have been mentioned along with Explanation 1, 2, 3, 4 and 5. The notice is defective as the Assessing Officer (AO) has not struck off irrelevant clause of section 271(1)(c) of the Act in the said notice, thus, making the notice ambiguous. In support of her submissions, the Id. AR placed reliance on following decisions:

(i) CIT vs SSA's Emerald Meadows, 73 taxmann.com 241 (Karnataka); and

(ii) CIT vs. Manjunath Cotton and Ginning Factory 359 ITR 565 (Karnataka).

4. The Id. AR further submits that even on merits penalty levied u/s. 271(1)(c) of the Act is unsustainable. The assessee had claimed deduction u/s. 10B of the Act in respect of 100% export oriented undertaking. The assessee had establishment an undertaking on 08.05.2003. The Finance Act 2000 prescribed 10 year tax holiday to 100% export oriented undertaking starting from 1st April 2001.

5. Since, the provisions of section 10B of the Act were made effective w.e.f. 1st April 2001, the deduction was available to undertaking establish after 1st April 2001 i.e. w.e.f assessment year 2001-02 onwards. The assessee was under bonafide belief that the assessee is eligible for deduction u/s. 10B of the Act for 10 years starting from assessment year in which export oriented undertaking had started.

Ten years for assessee, thus, would have come to an end in AY 2014-15. The sunset for said deduction was from 1st April 2010 i.e. from assessment year 2010-11. The total assessment years covered by section 10B of the Act were nine years i.e. from AY 2001-02 to 2009-10, if that be the case, the basic structure of law had anomaly as 10 years would never be completed from the start of unit till the date of sunset clause. Later on, deduction u/s. 10B of the Act was extended for AY 2011-12 by the Finance Act 2009. Since, there was ambiguity in the provision of the Act, two views were possible, i.e. any export oriented undertaking would be eligible for benefit u/s. 10B of the Act, if it starts operation between 01.04.2001 to 01.04.2010. Since, assessee's export oriented undertaking started operation on 08.05.2003, the assessee has taken one of the possible views and claimed deduction. In any case, entire computation has been given along with return of income, hence, no particulars of income were withheld by the assessee. Therefore, no penalty u/s. 271(1)(c) of the Act could have been levied. The Id. AR in support of his submissions placed reliance on decision in the case of *CIT vs. Reliance Petro Products P Ltd.*, 322 ITR 158 (SC).

6. Per contra, Shri Rajesh Tiwari representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

7. Both sides heard, orders of the authorities below examined. The solitary issue raised by the assessee in appeal is against levy of penalty u/s. 271(1)(c) of the Act in respect of disallowance of assessee's claim of deduction u/s. 10B of the Act. The assessee had claimed deduction of Rs.57,17,737/-. During the course of assessment proceedings, the assessee surrender her claim of deduction. The AO initiated penalty proceedings u/s. 271(1)(c) of the Act. Notice u/s. 271(1)(c) r.w.s

274 dated 30.12.2016 of the Act was served upon the assessee. A perusal of said notice reveals that the AO has mentioned both charges of section 271(1)(c) of the Act with conjunction 'or' the relevant extract of notice where charge is mentioned is reproduced herein below:-

“have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.”

8. A perusal of assessment order dated 25.11.2016 reveals that AO has initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of income and furnishing inaccurate particulars within meaning of Explanation 1 to Sub section (1) of section 271(1)(c) of the Act. At the outset it is observed that in assessment order the assessee has mentioned both charges of section 271(1)(c) of the Act with conjunction '**and**' i.e. the Assessing Officer intended to levy penalty on both charges, whereas, in notice the AO has mentioned both charges with conjunction '**or**' further in notice the Assessing Officer has invoked all explanations to section 271(1)(c) of the Act i.e. 1, 2, 3, 4 and 5. While indicating penalty the Assessing Officer intended to invoke only Explanation 1. The ambiguity in mentioning charge at the time initiation of penalty and while issuing notice u/s. 274 r.w.s 271(1) of the Act is writ large. It is a well settled law that any ambiguity in notice for levy of penalty would vitiate penalty proceedings. Hence, penalty u/s. 271(1)(c) of the Act is liable to be deleted on account of defective notice itself.

9. Even on merits, I find that the assessee has a case. The assessee had claimed deduction u/s. 10B of the Act. During assessment proceedings the assessee surrender the claim. In computation of income and in Tax Audit Report filed along with return of income, the assessee had disclosed entire particulars. Merely, for the reason that the assessee has claimed deduction which according to the AO was

not admissible to the assessee would not make a case for levy of penalty under section 271(1)(c) of the Act. The Hon'ble Apex Court in the case of Reliance Petro Products P Ltd. (supra) has held that mere making of a claim which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of assessee. Such claim made in the return cannot amount to inaccurate particulars. Thus, even on merits penalty levied u/s. 271(1)(c) of the Act is unsustainable.

10. In the result, impugned order is *set aside* and appeal of assessee is allowed.

Order pronounced in the open court on Friday the 27th day of December, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 27/12/2024

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI