



ITA No.2552/M/2013
Sezal Glass Limited
Assessment Year- 2006-07

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री शक्तिजीत दे ,न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SHRI SAKTIJIT DEY, JM AND SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.2552/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2006-07)

Sezal Glass Limited 201/202, Abhilasha 2 nd Floor, S.V. Road, Kandival(W) Mumbai – 400 067	बनाम/ Vs.	Assistant Commissioner of Income Tax 9(3) Aaykar Bhavan Mumbai - 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AADCS-8659-M		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

पीलार्थी की ओर से / Appellant by	:	Dr. Prayag Jha & Shri Prateek Jha, Ld. ARS
प्रत्यर्थी की ओर से/ Respondent by	:	Dr. A.K. Nayak, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	26/04/2017
घोषणा की तारीख / Date of Pronouncement	:	02/05/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The Captioned appeal by assessee for Assessment Year [AY] 2006-07 assails the order of Ld. Commissioner of Income Tax (Appeals)-20 [CIT(A)], Mumbai dated 06/12/2012 *qua* confirmation of penalty u/s 271(1)(c).
2. Facts leading to the dispute are that the assessee, being resident corporate assessee, was assessed u/s 143(3) at Rs.1,70,69,864/- after certain adjustments and disallowances vide order dated 30/12/2008 against returned income of Rs.1,11,48,990/- *e-filed* by the assessee on 28/11/2006. The assessee was engaged in the business of *manufacturing of different kinds of glasses* for which it has an industrial undertaking at *Daman*, an eligible entity to claim deduction u/s 80-IB @30%. During Assessment proceedings, it was noticed that the assessee credited a sum of Rs.1,07,05,561/- under the head '*other income*' which comprised of *interest, foreign exchange gains, misc. income, dividend on shares* etc. against which deduction u/s 80-IB was claimed, which, in the opinion of Ld. AO, was not income derived from industrial undertaking and hence not eligible for the said deduction. Resultantly, the deduction of 80-IB was denied on '*other income*' for which penalty proceedings u/s 271(1)(c) were initiated and finally, a penalty of Rs.36,96,564/- was imposed on the assessee by Ld. AO for '*furnishing of inaccurate particulars of income and concealment of income*' vide penalty order dated 23/03/2011 after issuance of mandatory notice u/s 274.
3. In the meantime, the quantum proceedings were carried up to the level of ITAT vide ITA No. 1661/Mum/2010 order dated 23/09/2011 with partial success wherein the assessee was found eligible to claim 80-IB against



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Rs.75,03,543/- out of aggregate amount of Rs.1,07,05,561/- leaving a balance of Rs.32,02,018/- for which the assessee was found not eligible to claim 80-IB deduction.

4. The assessee contested AO's penalty order before Ld. CIT(A) with partial success vide impugned order where the Ld. CIT(A) after considering the Tribunal's quantum order restricted penalty *qua* non-eligible amount of Rs.32,02,018/- against which the assessee is in appeal before us.

5. The Ld. Counsel for assessee, while drawing our attention to the documents placed in the *paper book*, assailed the penalty order on legal grounds as well as on merits and contended that the impugned penalty has been imposed by AO without due application of mind as no proper satisfaction has been recorded to initiate the penalty and further, the notice issued u/s 274 do not clearly specify the limb for which the penalty was being levied as relevant words has not been *striked-off* and therefore, the assessee has lost a vital right to contest the same. Per *contra*, Ld. DR asserted that the penalty has clearly been initiated by Ld. AO with due application of mind and the assessee, at all time, knew the offence for which the penalty was being levied and hence debarred from raising the legal ground now. Our attention was drawn to the provisions of Section 292B to contend that even presuming a defect in the notice u/s 274, the same do not invalidate the penalty proceedings. Further, the assessee actively contested the penalty proceedings fully knowing the grounds for which he was being penalized.

6. After hearing rival contentions, we do not see much weight in the legal grounds raised by the Ld. AR as against the arguments made by Ld. DR. The AO duly initiated the penalty proceedings in the quantum assessment and levied the penalty after issuance of the mandatory notice u/s 274. Further, the defect, if any, found in the standard printed proforma of notice u/s 274, stood



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cured by the provisions of Section 292B and do not invalidate the penalty proceedings. This point is further fortified by the fact that the assessee actively contested the penalty proceedings without an *iota* of doubt in his mind as to the ground for which he was being penalized. Therefore, the legal grounds raised by the Ld. AR stands rejected.

7. The Ld. AR, on merits, contended that the assessee earned '*other income*' which consisted of certain miscellaneous income earned by the assessee during the course of business and the same were inextricably linked with the eligible business carried on by the assessee and therefore, the Tribunal provided a major relief to the assessee. Further, the assessee did not furnish any inaccurate particulars of income or concealed any income within the meaning of Section 271(1)(c) as all particulars were duly disclosed at appropriate places and the assessee made a *bona-fide* claim against the same and hence, penalty deserve to be deleted on the facts of the case. Even otherwise, the lower authorities erred in appreciating the fact that the assessee derived benefit only to the extent of 30% of impugned items by way of deduction u/s 80-IB as against 100% presumed by the lower authorities, which in itself is erroneous and reflect non-application of mind. Per contra Ld. DR contended that the Tribunal has rejected the 80-IB claim of the assessee to the extent of Rs.32,02,018/- which, in itself, justifies imposition of penalty as the assessee made a claim for which it was never entitled for.

8. After perusing rival contentions and material on record, we find strength in the arguments of the Ld. AR. It is to be noted that the assessee claimed 80IB deduction towards certain items and the Tribunal uphold the major claim of the assessee which proves the point that the assessee made a claim which was *bona-fide* and tenable in law. Therefore, the assessee made a legally valid claim, which was accepted to a major extent. In view of the same, we



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are of the considered opinion that the assessee do not deserves to be saddled with the impugned penalty particularly when it derived benefit only to the extent of 30%, being deduction u/s 80-IB. Therefore, by deleting the same, we allow the assessee's appeal.

9. In nutshell, the assessee's appeal stands allowed on merits.

Order pronounced in the open court on 02nd May, 2017.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 02.05.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai