

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

ITA no.7008/Mum./2013
(Assessment Year : 2003-04)

ITA no.7009/Mum./2013
(Assessment Year : 2006-07)

Income Tax Officer
Ward-9(1)(4), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Appellant

v/s

M/s. Gleg Engineers Pvt. Ltd.
303, Dheeraj Plaza, Hill Road
Bandra (W), Mumbai 400 050
PAN - AAACG8338G

..... Respondent

Revenue by : Shri Nitin Waghmode
Assessee by : Shri M. Subramanian

Date of Hearing - 19.01.2016

Date of Order - 29.01.2016

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid two appeals by the assessee are directed against two separate orders of the learned Commissioner (Appeals), confirming imposition of penalty under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment years 2003-04 and 2006-07.

2. Briefly stated the facts are, assessee a company filed its return of income for the respective assessment years claiming deduction under section 80IA(4) of the Act. Assessments in case of the assessee for both the assessment years were completed rejecting assessee's claim of deduction under section 80IA(4). Against the assessment order so passed, assessee preferred appeals before the learned Commissioner (Appeals) and being unsuccessful, carried further in appeal before the Tribunal. The Tribunal, for the assessment year 2004-05, restored the matter back to the file of the Assessing Officer to verify as to whether the assessee has fulfilled the conditions of section 80IA(4). As far as assessment year 2007-08 is concerned, the Assessing Officer disallowed assessee's claim of deduction under section 80IA(4) on interest income by treating it as income from other sources. The learned Commissioner (Appeals) also confirmed the disallowance of assessee's claim of deduction under section 80IA(4). As far as assessment year 2003-04 is concerned, the Assessing Officer, in pursuance to the direction of the Tribunal, again re-examined assessee's claim of deduction under section 80IA(4), but ultimately rejected the claim while completing the assessment. The learned Commissioner (Appeals) also confirmed the disallowance. On the basis of disallowance of assessee's claim of deduction under section 80IA(3), Assessing Officer initiated proceedings for imposition of penalty under

section 271(1)(c) for both the assessment year and ultimately, proceeded to impose penalty alleging furnishing of inaccurate particulars of income. Being aggrieved of the penalty orders passed for the assessment years under dispute, the assessee preferred appeals before the learned Commissioner (Appeals). The learned Commissioner (Appeals), however, confirmed imposition of penalty for both the assessment years. Being aggrieved, the assessee is in appeal before us.

3. Learned Counsel for the assessee, at the outset, submitted, the appeals preferred by the assessee challenging the disallowance of deduction claimed under section 80IA(4), in the meanwhile, have been disposed off by the Tribunal, vide order dated 23rd November 2015, again restoring back the issue to the file of the Assessing Officer for deciding assessee's claim of deduction under section 80IA(4), by keeping in view the decision of the Bombay High Court in case of CIT v/s ABG Heavy Industries Ltd., [2010] 322 ITR 323 (Bom.) as well as the decision of the Hon'ble Supreme Court in Liberty India Ltd. v/s CIT, [2009] 317 ITR 218 (SC). He, therefore, submitted as the basis on which the penalty was imposed no longer exist in view of the order passed by the Tribunal, penalty imposed under section 271(1)(c) cannot survive.

4. Learned Departmental Representative has not controverted the fact that the issue in quantum proceedings has been restored back to the file of the Assessing Officer.

5. We have considered the submissions of the parties and perused the material available on record. As could be seen, the basis for imposition of penalty under section 271(1)(c) for both the assessment years under dispute is the addition made on account of disallowance of assessee's claim of deduction under section 80IA(4). However, as could be seen from the order dated 23rd November 2015 of the Tribunal, Mumbai Bench, in ITA no.1696/Mum./2012 and others, the co-ordinate bench while deciding the issue relating to disallowance of claim of deduction under section 80IA(4), has restored the matter back to the file of the Assessing Officer for deciding afresh keeping in view the principle laid down in certain judicial precedents as referred to in their order. Thus, as could be seen, additions on the basis of which the Assessing Officer proceeded to impose penalty under section 271(1)(c) no longer exist as the issue relating to such addition has been restored back to the file of the Assessing Officer for fresh consideration. Therefore, as the very basis for imposition of penalty under section 271(1)(c) no more exist, penalty imposed under section 271(1)(c) cannot survive, at least, for the time being. Accordingly, we delete the same for both the assessment years under dispute.

However, we make it clear that it will be open for the Assessing Officer to initiate proceedings for imposition of penalty under section 271(1)(c), if warranted, after completion of assessment in pursuance to direction of the Tribunal.

6. In the result, appeals for A.Y. 2003-04 and 2006-07 are allowed for statistical purposes.

Order pronounced in the open Court on 29.01.2016

**Sd/-
ASHWANI TANEJA
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 29.01.2016

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

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(Dy./Asstt. Registrar)
ITAT, Mumbai