
(2010) 07 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : I. T. A. No"s. 225 and 232 of 2010

CIT

APPELLANT

Vs

Raj Overseas

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Income Tax Act, 1961 — Section 271(1)(c), 80IB

Citation : (2011) 336 ITR 261

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of I. T. A. Nos. 225 and 232 of 2010, as both the appeals raise common question of livability of penalty when the assessee had put forward the claim which was found not acceptable. In I. T. A. No. 225 of 2010, the Revenue has claimed following substantial questions! of law :

(i) Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in law in deleting the penalty imposed u/s 271(1)(c) on the amount of deduction claimed u/s 80-IB on the export incentives by holding that there was no deliberate furnishing of inaccurate particulars by the assessee, given the fact that the decision of the Hon"ble Supreme Court i Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, disallowing the claim of deduction under Chapter VI-A of the Act on the export incentives was already available to the assessee at the time of filing of return of income for the assessment year 2003-04, and therefore, the assessee was evidently filing inaccurate particulars of income in claiming deduction u/s 80-IB on the export incentives ?

(ii) Whether the decision of the income tax Appellate Tribunal to delete the penalty u/s 271(1)(c) of the Act is justified in the light of the decision of the

Hon''ble Supreme Court in *Liberty India Vs. Commissioner of Income Tax*, whereby the non-allowability of section 80-IB deduction on the export incentives has been re-affirmed ?

(iii) Whether the decision of the income tax Appellate Tribunal quashing the penalty order u/s 271(1)(c) on the ground that there is no deliberate concealment is justified in the light of the decision of the Hon''ble apex court in *Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others*, which has held that mens rea is not an essential ingredient for levy of penalty u/s 271(1)(c) of the Act, and that levy of such penalty is mandatory as remedy for loss to the Revenue, and given the fact that such loss to the Revenue has occurred in the instant case due to wrong claim by the assessee with respect to deduction u/s 80-IB ?

2. The assessee is a manufacturer and derived income from exports. The assessee claimed deduction u/s 80-IB of the Act in respect of income from duty drawback. The Assessing Officer disallowed the said claim on the ground that the income derived from duty drawback was not income derived from the industrial undertaking, as held by the Hon''ble Supreme Court in *Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore*, . Penalty was also levied. The Commissioner of income tax (Appeals) upheld the view of the Assessing Officer but the Tribunal deleted the penalty with the following observations :

Thus, prima facie, it indicates that this issue was a debatable one. The Hon''ble Punjab and Haryana High Court in the case of *CIT v. Budh Well Co-operative Sugar Mills* (supra) has held that if an assessee has made a bona fide claim on the basis of the law laid down by various Hon''ble High Courts then penalty would not be levied upon such an assessee merely on the ground that his claim was disallowed. Similarly, the Hon''ble Rajasthan High Court in the case of *Commissioner of Income Tax Vs. Harshvardhan Chemicals and Mineral Ltd.*, has held that if as the assessee claims some deductions which are debatable then it could not be said that the assessee has concealed any income or furnished inaccurate particulars of income which exposed him with the penalty proceedings u/s 271(1)(c) of the Act.

3. We have heard learned counsel for the Revenue.

4. In view of the factual finding of the Tribunal, it cannot be disputed that'' the issue was debatable and deduction claimed by the assessee did not lack bona fides. In such a situation, penalty u/s 271(1)(c) of the Act was not attracted. In a recent judgment of the Hon''ble Supreme Court in *Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd.*,), the legal position to this effect has been reiterated. If the assessee has made full disclosure in the return, the claim for deduction cannot be held to be giving of inaccurate particulars. The view taken by the Tribunal is, thus, a possible view.

5. No substantial question of law arises. The appeals are dismissed.