
(2011) 02 P&H CK 0477
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Appeal No. 779 of 2010

CIT

APPELLANT

Vs

Rubber Udyog Vikas (P.) Ltd.

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 260A, 271(1), 71(2), 72

Citation : (2011) 02 P&H CK 0477

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal u/s 260A of the income tax Act, 1961 (for short "the Act"), has been filed by the Revenue against the order dated March 31, 2010, passed by the income tax Appellate Tribunal Delhi Bench "F", New Delhi (in short "the Tribunal") in I.T.A. No. 4435/Del/2009 (Rubber Udyog Vikas P. Ltd. v. Asst. CIT [2011] 10 ITR (Trib) 418 (Delhi), relating to the assessment year 1994-95.

2. The following substantial questions of law have been claimed for determination by this court :

(1) Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was right in law in deleting the penalty of Rs. 6,30,930 levied by the Assessing Officer, u/s 271(1)(c) of the income tax Act, 1961, even though the assessee had failed to discharge the onus to explain satisfactorily inaccurate furnishing of income through wilful attempt of setting off of brought forward business losses against the capital gains of the current year by deliberate violation of the specific provisions of sections 72 and 71(2) of the income tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was right in law in deleting the penalty of Rs.

6,30,930 levied by the Assessing Officer u/s 271(1)(c) of the income tax Act, 1961, by holding that it was not a fit case for levy of penalty merely by declining the assessee's claim for set off of business loss against other heads of income even though the penalty leviable on the contravention of the provisions of a civil statute, like the income tax Act and it is settled law that breach of a civil obligation attracts levy of penalty and is contrary to the decision of the honble Supreme Court in the case of Union of India v. Dharafernand Textile Processors [2008] 306 ITR 277 (SC) ?

3. The facts, in brief, necessary for adjudication as narrated in the appeal, are that the assessee filed its return for the assessment year in question, on August 23, 1994, declaring a loss of Rs. 2,51,500 and, thereafter, a revised return on November 30, 1995, declaring loss of Rs. 8,51,615. In the proceedings that were initiated u/s 143(3) of the Act, the Assessing Officer under the provisions of sections 71(2) and 72 of the Act made various disallowances, particularly, the claim of the assessee for setting off of the brought forward business losses of the assessment years 1991-92 to 1993-94 against the capital gains during the current year, vide order dated March 27, 1997. The appellate authority, i.e., the Commissioner of income tax (Appeals) (in short "the CIT(A)") also did not agree to the submission made on behalf of the assessee in regard to not allowing the setting off of the assessed business loss for the assessment years 1991-92 to 1993-94 against the capital gains during the current year, in the appeal carried by it. The appeal was consequently dismissed on July 16, 1997. In further appeal at the instance of the assessee, the order of the Commissioner of income tax (Appeals) was upheld by the Tribunal.

4. In view of the aforesaid, the Assessing Officer levied a penalty of Rs. 6,30,930 u/s 271(1)(c) of the Act on the assessee, vide order dated March 23, 2004. The Commissioner of income tax (Appeals) in appeal against that order drew support from a decision of this court in Commissioner of Income Tax Vs. Munish Iron Store, and observed that since no satisfaction had been recorded by the Assessing Officer either during the assessment proceedings or in the assessment order for initiating penalty proceedings u/s 271(1)(c) of the Act and, thus, ordered that the penalty imposed under that provision stood cancelled. The Tribunal, on appeal by the Revenue against the order of the Commissioner of income tax (Appeals) in the matter of penalty, vide order dated September 25, 2009, remitted the case to the Commissioner of income tax (Appeals) with a direction to decide the question of levy of penalty u/s 271(1)(c) of the Act on the merits. Thereafter, the Commissioner of income tax (Appeals) dismissed the appeal of the assessee and confirmed the penalty. However, the assessee succeeded before the Tribunal and the appeal carried by it against the order of the Commissioner of income tax (Appeals), dated October 29, 2009, was allowed, vide order dated March 31, 2010.

5. We have heard learned counsel for the Revenue and have perused the record.

6. The point in issue in this appeal is, whether the Tribunal was justified in

deleting the penalty by holding that the claim of the assessee with regard to set off of unabsorbed business losses against capital gains did not amount to deliberate concealment or furnishing of inadequate particulars.

7. The Tribunal, while deleting the penalty had held as under (page 421 of 10 ITR (Trib)) :

We have considered the rival contentions carefully gone through the orders of the authorities below and also deliberated upon the various case law cited by the learned authorised representative and discussed by the lower authorities in their respective orders. From the record, we found that the assessee has claimed set off of unabsorbed business loss against the capital gains earned during the year. As a result of the Assessing Officers action for declining of such set off, penalty was imposed u/s 271(1)(c). The contention of the assessee was that the claim was made in a bona fide way for setting off carry forward business loss against the income arising on sale of business assets. Along with the return of income, the assessee has also submitted the directors report duly disclosing the fact of sale of building and utilisation of the amount for the purpose of business. Thus, we found that the assessee has furnished all the particulars of income which is evident from the computation of income, directors report, etc., filed along with the return of income. In the quantum order, the Assessing Officer declined the assessee's claim of set off. Nowhere has the Assessing Officer alleged that the assessee's claim is mala fide. Thus, it was a simple case of denial of the assessee's claim of set off of business loss against the capital gains. In this regard, the honble Supreme Court in the case of CIT v. Reliance Petroproducts (P) Ltd. 2010 322 ITR 158 (SC) while confirming the order of the honble High Court deleting the penalty imposed u/s 271(1)(c) for denial of the assessee's claim of deduction of interest expenditure, has categorically observed that (page 164) : By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Accordingly, it was held that decline of the assessee's claim of interest against the loan utilised for making investment in tax-free securities,, will not amount to furnishing of inaccurate particulars so as to attract penalty u/s 271(1)(c) of the Act. The honble Supreme Court in this case after considering the proposition of law laid down in the case of Dilip N. Shroff v. Joint CIT [2007] 291 ITR 519 (SC) and Union of India v. Dharamendra Textile Processors [2008] 306 ITR 277 (SC), held as under (page 166 of 322 ITR) :

A mere making of the claim, which is not sustainable in law, by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars

Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty u/s 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty u/s 271(1)

(c). That is clearly not the intendment of the Legislature.

8. The Tribunal held that making an incorrect claim would not tantamount to furnishing of inaccurate particulars unless it was established that the assesses had acted with a mala fide intention of had claimed deductions being aware of the well settled legal position. Further, a perusal of the findings recorded by the Tribunal shows that the assesses had claimed deductions on account of set off of unabsorbed business losses against the income from the capital gains, which was held not to be mala fide. The Tribunal had observed in plain words that the assesses had disclosed all the particulars along with the return of income and it was not a fit case for levy of penalty.

9. Learned counsel for the appellant could not show that the above findings of the Tribunal are illegal or perverse in any manner so as to persuade this court to interfere therewith.

10. Accordingly, finding no merit in the appeal the same is dismissed.