(2016) 07 CAL CK 0023

In the Calcutta High Court

Case No : ITA No. 10 of 2010

CIT, Central-1, Kolkata APPELLANT

Vs

M/s. Thakur Prasad Sao and Sons (P) Ltd. RESPONDENT

Date of Decision : 27-07-2016

Acts Referred:
Income Tax Act, 1961 — Section 271(1)(c)

Citation : (2016) 386 ITR 448

Hon'ble Judges : Girish Chandra Gupta and Arindam Sinha, JJ.

Bench : Division Bench

Advocate : Mr. P. Dhudhoria, Advocate, for the Appellant; Mr. J.P. Khaitan, Sr. Advocate and Mr. P. Jhunjhunwala, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The appeal is directed against the judgement and order dated 17th August, 2009 passed by the learned Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.2134(Kol) of 2008 pertaining to the assessment year 2005-06 by which the learned Tribunal dismissed an appeal preferred by the revenue. The aggrieved revenue has once again come up in appeal. The following substantial question of law was formulated on 8th February, 2010 when the appeal was admitted :

"Whether in the facts and circumstances of the case, the learned Tribunal erred in law by overlooking the fact of acceptance of the disallowances made by the Assessing Officer and non-filing of appeal by the assessee from the assessment order amounting to furnishing of inaccurate particulars of income warranting imposition of penalty under section 271(1)(c) of the Income Tax Act, 1961 ?"

2. After hearing the learned advocates for the parties, it is amply clear that the assessee did not accept the disallowance. As a matter of fact, there was no disallowance as such. The assessee had paid Rs.2.75 Crores approximately on account of compensation for mining ores for a period of five years which he

claimed as a revenue expenditure. The assessing officer was of the opinion that the expenditure should be allowable over a period of five years which is also the period during which the mining is to be conducted. The assessee accepted that order and revised the subsequent returns. In the facts of the case, both the CIT (A) and the learned Tribunal were of the opinion that it was not possible to hold that the assessee furnished inadequate particulars or concealed his income.

3. Mr. Dhudhoria, learned advocate for the revenue did not draw our attention to any point of substance which may lead this Court to take any other view. Mr. Khaitan, learned Senior Advocate for the assessee has drawn our attention to a judgement of this Court in the case of CIT v. Pilani Investments & Industries Corporation Ltd. reported in (2016) 383 ITR 635 (Cal) to which one of us was a party (Girish Chandra Gupta, J.) wherein the following view was taken :

"Hence, the Assessing Officer himself admitted that the assessee had disclosed the said interest income. Disclosure and concealment cannot co-exist. When a finding is recorded that disclosure was indeed made then the conclusion as regards concealment is bad. Furthermore, it cannot also be said that the assessee had furnished inaccurate particulars of income. This is so because there was no material on record to indicate that the particulars furnished by the assessee were factually incorrect. As held in Reliance Petroproducts (supra) merely making a claim which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee."

4. In that view of the matter, the question is answered in the negative and against the revenue. The appeal, as such, is dismissed.

