(2010) 05 GUJ CK 0063

In the Gujarat High Court

Case No : Tax Appeal No. 560 of 2009

Commissioner of Income Tax APPELLANT

Vs

Backbone Enterprises RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2011) 238 CTR 197 : (2010) 195 TAXMAN 200

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Mauna M. Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

H.N. Devani, J.—In this appeal u/s 260A of the Income Tax Act, 1961 (''the Act''), Appellant -revenue has proposed the following three questions:

1. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in law in upholding the order of the Id. CIT(A) who had deleted the penalty levied u/s 271(1)(c) by accepting the fact that the wrong claim of deduction u/s 80IA was a bona fide error?

2. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in deleting the penalty by holding that where the return filed includes furnishing of inaccurate particulars of income, and upon cognizance taken by the department, the Assessee filed revised return admitting the default, the same can be termed as circumstances leading to bona fide mistake or omission, thereby, overlooking the decision of the Hon''ble Supreme Court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, wherein it is held that wilful concealment is not an essential ingredient for attracting civil liability?

3. Whether the Appellate Tribunal is right in law in not considering various judicial pronouncements holding that filing of revised return after concealment is

detected by the department will not absolve the Assessee from liability to penalty for concealment. P.C. Joseph & Bros. v. CIT [2001] 108 Taxman 253 (Ker.), CIT v. Glamour Restaurant [2003] 80 TTJ 763, Manmohan Gupta v. CIT [2004] 189 CTR (Raj.) 331 , Commissioner of Income Tax Vs. J.K.A. Subramania Chettiar, Deepak Construction Company Vs. Commissioner of Income Tax,

2. The Respondent - Assessee filed its return of income on 24-10-2001 claiming deduction u/s 80IA of the Act. The Assessing Officer noticed that the Assessee was a firm and that under the provisions of the Act, only companies registered in India were entitled to deduction u/s 80IA. He, therefore, issued notice u/s 154 of the Act on 14-3-2002 calling upon the Assessee to show cause as to why deduction claimed u/s 80IA should not be disallowed. In reply to the said notice, the Assessee vide letter dated 18-3-2002 informed the Assessing Officer that it had already filed a revised return of income u/s 139(5) on 15-3-2002 wherein no claim u/s 80IA had been made. The Assessing Officer did not consider the Assessee''s claim under the revised return and framed assessment determining total income at Rs. 69,74,621 as against the returned income of Rs. 18,96,110. In penalty proceedings, the Assessing Officer observed that the claim for deduction u/s 80IA was prima facie a wrong claim and that the said wrong claim was brought to the notice of the Assessee by the Assessing Officer vide notice dated 14-3-2002 u/s 154; and that it was in response to the said notice that the Assessee had filed revised return of income withdrawing the claim u/s 80IA. According to the Assessing Officer since the Assessee had made a wrong claim u/ s 80IA of the Act, it could not escape from penalty proceedings u/s 271(1)(c) of the Act for concealment of income and furnishing inaccurate particulars of its income by filing revised return. He accordingly, imposed penalty on the total concealed income of Rs. 66,33,439 at a minimum at the rate of 100 per cent of the tax sought to be evaded which came to Rs. 25,21,908.

3. The Assessee carried the matter in Appeal before Commissioner (Appeals), who set aside the penalty. Revenue carried the matter in appeal before the Tribunal which came to be dismissed.

4. Assailing the impugned order of the Tribunal, the learned Senior Standing Counsel for the Appellant -revenue submitted that it was only after the Assessing Officer had brought it to the notice of the Assessee that it was not entitled to claim deduction u/s 80IA of the Act, that the Assessee had filed revised return withdrawing the claim. That while filing return of income, the Assessee had concealed its income and furnished inaccurate particulars and as such became liable to penalty u/s 271(1)(c). That merely because it had filed a revised return withdrawing the claim after the Assessing Officer brought the same to its notice, it cannot be said that the Assessee had not concealed its income and furnished inaccurate particulars.

5. A perusal of the order of Commissioner (Appeals) indicates that after filing of the return of income by Respondent - Assessee claiming deduction u/s 80IA of the Act, the Assessing Officer had issued notice dated 14-3-2002 u/s 154 of the

Act in relation to assessment year 2000-01. Immediately on the next day the Assessee filed revised income for the year under consideration, that is, assessment year 2001-02 withdrawing the claim u/s 80IA. Commissioner (Appeals) further found that the Assessing Officer subsequently issued another notice u/s 154 of the Act on 18-3-2002 in relation to assessment year 2001-02, hence, there was no valid notice u/s 154 in relation to the year under consideration till 18-3-2002. It was further observed that there is no evidence of any investigation or detection of concealment of income by the Assessing Officer as alleged in the impugned penalty order; that the Assessee had long been assessed under the status of firm and had never made any such claim u/s 80IA and that it was only in the assessment year under consideration that the Assessee made such a claim. From the facts emerging on record, Commissioner (Appeals) was of the view that the Assessee was served with a valid notice u/s 154 only on 18-3-2002. However, the Assessee had already filed a revised return on 15-3-2002. He, accordingly, held that the Assessee had withdrawn its claim u/s 80IA on its own motion on 15-3-2002 by filing revised return u/s 139(5). Commissioner (Appeals) was of the view that the Assessee was under a bona fide belief that deduction u/s 80IA was available to it in the status of firm; that after it realized that this claim had been inadvertently made in the return, it filed revised return on 15-3-2002. According to Commissioner (Appeals) the facts of the case seen as a whole indicate that the claim in the original return was made under a bona fide belief and that since default had been committed under a bona fide belief, which was rectified by filing a revised return, the Assessee was not liable to punishment u/s 271(1)(c) and, accordingly, set aside the penalty.

6. As can be seen from the impugned order of the Tribunal, the Tribunal has found that as a matter of fact that the Assessee had made a bona fide claim which was later on withdrawn by filing a revised return. Considering the decision of the Madras High Court in the case of Commissioner of Income Tax Vs. J.K.A. Subramania Chettiar, on which reliance was placed on behalf of the revenue, the Tribunal was of the view that if after having originally filed the return of income, if an Assessee subsequently files a fresh return voluntarily before the department has made any investigation or detected concealment of income, even then he cannot escape from the consequence of his having concealed the income in the original return and will be liable to penalty; if on the other hand, the defect in the original return was merely an inadvertent omission or unintended wrong statement, the Assessee would certainly have a right to have the same corrected by filing a revised return. In the facts of the present case, the Tribunal found that the Assessee had claimed deduction u/s 80IA under the bona fide belief that it was entitled to deduction u/s 80IA of the Act. Thereafter, the Assessee had withdrawn the same vide its revised return. According to the Tribunal, when the Assessee had committed the default under a bona fide belief which was rectified by filing a revised return, it could not be held liable for penalty u/s 271(1)(c) of the Act and accordingly, confirmed the order of Commissioner (Appeals).

7. In the light of the concurrent findings recorded by Commissioner (Appeals) as

well as the Tribunal, it is apparent that the Assessee had bona fide made a claim for deduction u/s 80IA of the Act, which came to be rectified by filing a revised return withdrawing the claim and that as such there was no concealment or furnishing of inaccurate particulars of income on the part of the Assessee. Moreover, the notice u/s 154 of the Act issued by the Assessing Officer also does not remotely indicate anything to that effect. In the circumstances, Commissioner (Appeals) was justified in setting aside the penalty imposed u/s 271(1)(c) of the Act.

8. In the background of the aforesaid facts, it is not possible to state that the impugned order of the Tribunal suffers from any legal infirmity so as to warrant interference.

9. In absence of any substantial question of law, as proposed or otherwise, the appeal is dismissed.