(2004) 08 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 64 of 2004

Commissioner of Income Tax	APPELLANT
Vs	
Deep Tools (P) Ltd.	RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 80HHC, 80HHC(4)

Citation : (2004) 191 CTR 257 : (2005) 274 ITR 603

Hon'ble Judges : N.K. Sud, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : D.S. Patwalia, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Revenue against order of deletion of penalty u/s 271(1)(c) of the IT Act, 1961 (for short, the Act).

2. The assessee filed its return for the asst. yr. 1994-95 declaring income of Rs. 2,87,830. Vide assessment order dt. 14th Dec., 1995, the AO assessed the income at Rs. 18,15,080.

3. The assessee had made a claim for deduction u/s 80HHG of the Act at Rs. 38,48,376 as per certificate in Form No. 10CCAC issued by M/s Rajpal & Co., CA. The AO pointed out errors in the said claim. The assessee filed a revised return by revising the computation statement at Rs. 24,76,592, The total turnover as per P&L a/c was Rs. 3,48,69,433 but in the audit certificate, the same was mentioned as Rs. 2,09,70,695.

4. The AO initiated penalty proceedings u/s 271(1)(c) of the Act. The assessee submitted a reply to the effect that its claim was bona fide and by mistake, total turnover was taken into account instead of turnover of the export unit. The assessee was maintaining separate books of accounts but it could not produce the same because of fire. The AO was not satisfied about the defence of the assessee and imposed penalty equivalent to 100 per cent of the tax evaded.

5. On appeal, the CIT(A) deleted the penalty holding that there was fire at the business premises of the assessee on 25th Sept., 1995 on account of which books of accounts were not produced. It was held that the mistake of the assessee was bona fide and was based on certificate of the CA. It was further held that there was no connivance with the CA. It was further observed that since the mistake could have been easily detected, the same did not appear to be intentional.

6. On further appeal by the Revenue, the Tribunal affirmed the view taken by the CIT(A).

7. It is submitted on behalf of the Revenue that following questions of law arise from the order of the Tribunal :

"(i) Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in law in cancelling the penalty on the ground that the explanation offered by the assessee that wrong claim of Section 80HHC in Form No. 10CCAC was only due to inadvertent mistake of the CA is bona fide when the assessee by showing different figures of turnover in Form No. 10CCAC and Form No. 3CA/3CD prepared by the same CA has failed to prove that the explanation offered by it is bona fide.

(ii) Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in law in deleting the penalty when admittedly the certificate issued by the CA was not in accordance with the provisions of Section 80HHC(4) of the IT Act, 1961, as accepted during the course of assessment proceedings."

8. There is nothing to show that mistake by the CA was not bona fide and mere fact that certificate issued by the CA was not in accordance with Section 80HHC(4) of the Act, was not enough to hold that the mistake was not bona fide. At any rate, as far as the assessee is concerned, no mala fides can be attributed to it, as the claim for deduction was based on the certificate of the CA with whom no collusion has been proved. In view of findings recorded by the Tribunal that error of the CA was inadvertent and did not lack bona fides, cancellation of order of penalty was clearly justified.

We are, thus, unable to hold that any question of law arises from the order of the Tribunal. Accordingly, this appeal is dismissed.

