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(2013) 02 DEL CK 0052

In the Delhi High Court

Case No : ITA 47 of 2013

Commissioner of Income Tax APPELLANT

Vs

Madhushree Gupta RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

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

Citation : (2013) 4 AD 625

Hon'ble Judges : R.V. Easwar, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Suruchi Aggarwal, for the Appellant; V.N. Jha, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This appeal is directed against the Tribunal''s order dated 25.05.2012 in ITA No. 1589/Del/2005 pertaining to the assessment year 2001-02. It arises out of the penalty order passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961. A penalty of Rs. 18,79,303/- had been imposed upon the respondent. The Commissioner of Income Tax (Appeals) confirmed the penalty, which had been deleted by the Tribunal by virtue of the impugned order. The Assessing Officer had noted that the assessee had claimed current year''s losses amounting to Rs. 80,65,000/- pertaining to the business of the assessee in respect of the share trading business. The respondent/assessee had set off this loss against the amount of profit after claiming deduction u/s 80HHC of the said Act. The Assessing Officer held that the deduction u/s 80HHC was allowable on the gross total income as defined u/s 80AB read with Section 80HHC. The gross total income, according to Section 80AB, was the income of the assessee after setting off the current year''s losses. Consequently, the Assessing Officer had, in the quantum proceedings, disallowed the deduction of Rs. 53,17,841/- out of the total deduction of Rs. 1,03,61,340/- claimed by the assessee /respondent.

2. The learned counsel for the respondent pointed out that the Tribunal had placed reliance on the decision in the case of Commissioner of Income Tax,

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Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., wherein it was held that mere making of a claim, which is not sustainable in law, would not, ipso facto, amount to furnishing inaccurate particulars regarding the income of the assessee and would, therefore, not automatically result in a penalty order against the assessee.

3. The learned counsel for the appellant placed reliance on the decision of this Court in the case of Commissioner of Income Tax Vs. Zoom Communication Pvt. Ltd., , wherein this Court, after examining the decision of the Supreme Court in Reliance Petroproducts Private Limited (supra), had observed that the Court cannot overlook the fact that only a small percentage of the income tax returns are picked up for scrutiny and if the assessee makes a claim which is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bonafide, it would be difficult to say that he would still not be liable to penalty u/s 271(1)(c) of the Act. Therefore, the issue to be examined in the present case is whether the claim made by the assessee is wholly without any basis and the explanation furnished by the assessee for making such a claim is not bonafide. The learned counsel for the respondent pointed out that the reason for making the claim in the manner indicated above was that there were decisions of the Bombay High Court in the case of Commissioner of Income Tax Vs. Shirke Construction Equipments Ltd., and also of the Kerala High Court in the case of Commissioner of Income Tax Vs. Smt. T.C. Usha, which supported the position adopted by the respondent / assessee in its return. It is only subsequently that the matter was settled by the Supreme Court in the case of IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, , wherein the Supreme Court held that the provisions of Section 80AB had an overriding effect over all the other sections in Chapter VI-A including Section 80HHC. The decision in IPCA Laboratory Ltd. (supra) came subsequent to the filing of the return. Therefore, it cannot be said that the claim made by the respondent/assessee was not bona fide or without any basis. We agree with the submission made by the learned counsel for the respondent/ assessee. The present case is not covered by the ratio laid down in Zoom Communication Private Limited (supra). The Tribunal has arrived at the correct decision relying upon the decision of the Supreme Court in Reliance Petroproducts Private Limited (supra). No question of law arises for our consideration.

The appeal is dismissed.

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