

---

**(2000) 12 DEL CK 0021**  
**In the Delhi High Court**  
**Case No : ITA No. 160 of 2000**

Commissioner of Income Tax-II and Another

APPELLANT

Vs

M/s. Rahuljee and Co.

RESPONDENT

---

**Date of Decision :** 08-12-2000

**Acts Referred:**

**Citation :** (2001) 3 AD 141 : (2001) 167 CTR 286 : (2001) 250 ITR 225 :  
(2001) RLR 294 : (2001) 115 TAXMAN 509

**Hon'ble Judges :** Dr. Arijit Pasayat, C.J.; D.K. Jain, J

**Bench :** Division Bench

**Advocate :** R.D. Jolly, Ms. Prem Lata Bansal and Ajay Jha, for the Appellant;

---

## Judgement

Arijit Pasayat, C.J.—In this appeal u/s 260A of the Income Tax Act, 1961 (in short "the Act") challenge is to the order dated 11th November, 1999, passed by Income Tax Appellate Tribunal Delhi Bench-A (in short "Tribunal") holding that cancellation of penalty levied u/s 271 (1)(c) of the Act was proper. It has to be noted that Assessing Officer imposed penalty which was cancelled by the Commissioner of Income Tax [Appeals] (in short "CIT(A)) in an appeal filed by the assessed. Revenue's appeal has been dismissed by the Tribunal. Dispute relates to Assessment Year 1987-88.

2. Brief reference to the factual aspects would suffice. assessed obtained order for supply of imported video cassettes to Czechoslovakia. It obtained import license to import video cassettes from a Korean company in semi-knocked down (SKD in short) condition. It was to be assembled in India by the assessed and then to be re-exported to Czechoslovakia. Goods were dispatched by the Korean company to the assessed along with the bill of entry which indicated the words "video blank cassettes tape in S.K.D. When the goods reached India, Customs authorities raised some doubts and accordingly they opened one of the packets. On opening it was noticed by the authorities that though the bill of entry mentioned that cassettes were in SKD condition, from the contents it was revealed that the cassettes were imported in assembled form. Since it was found

that assessed imported cassettes in finished form i.e. not in SKD condition. Collector of Customs confiscated the goods. Goods were later released by the Collector of Customs on payment of fine of Rs.3 lakhs and a penalty of Rs.50,000/-. assessed claimed the said amount as deduction. However, Assessing Officer held that as this payment was on account of breach of statutory rules relating to Customs duty and, Therefore, was not allowable. He also initiated penal proceedings u/s 271(1)(c) of the Act. Against the disallowance assessed preferred appeal before the Commissioner of Income Tax [Appeals] (in short CIT [A]) who deleted the addition. But on appeal by Revenue Tribunal restored the addition. In view of the above factual background Assessing Officer, as noted above, issued notice to the assessed to show cause as to why penalty u/s 271(1)(c) of the Act should not be imposed. assessed furnished its reply. Its stand was that disallowance was made only on the basis of order of the Collector of Customs Bombay. Neither the Assessing Officer nor the Tribunal had adjudicated the legal position about levability of such amount. It was claimed that the assessed had to export cassettes to Czechoslovakia; profit made there from was subjected to tax and, Therefore, expenditure incurred should have been allowed. It was also submitted that penalty is imposable only if there was concealment of income or submission of inaccurate particulars of income. All the relevant factual aspects were before the authority. There was neither concealment nor furnishing of inaccurate particulars. Assessing Officer did not accept the plea and levied penalty of Rs.2,20,500/- after obtaining prior approval of the concerned Deputy Commissioner of Income Tax (in short "DCIT"). assessed preferred appeal before the CIT(A) against the imposition of penalty. Said authority observed that in view of Explanation-I to Section 271(1)(c) penalty was not leviable. Matter was carried in appeal before the Tribunal by Revenue. Tribunal upheld the deletion of penalty and observed as follows:

"Thus the only question for our consideration is whether the Explanation furnished by the assessed was bona fide or not. The facts of the case have been mentioned earlier. It is evident that the assessed has ordered for import of video cassettes in SKD form. Even the Korean company who supplied the goods to the assessed had mentioned so in the bill of entry. Subsequently even Korean company has clarified that the finished goods were supplied to the assessed company due to mistake in their computer. We also find that the addition made by the AO was deleted by the CIT(A) which was subsequently restored by the Tribunal. Even the Tribunal has referred this issue to the Hon"ble Delhi High court for their opinion. All these facts amply make it clear that though the assessed was not able to substantiate its Explanation, certainly its Explanation was bona fide and in view of Explanation I(b) to Section 271(1)(c) penalty u/s 271(1)(c) was not attracted. We find that the CIT(A) has cancelled the penalty by holding that the Explanation furnished by the assessed was bona fide".

3. Learned counsel for Revenue submitted that conclusions of the Tribunal are perverse and, Therefore, question of law arises from the order of Tribunal.

4. We find that Tribunal in quantum appeal had observed as follows: "For our purpose their finding (i.e. finding of the Collector of Customs) is final until and unless it is upset by the Customs Appellate Tribunal. So we proceed on the basis that assessed had committed a breach of rules". It was observed that assessed had claimed deduction relying on a decision of the Bombay High Court in Commissioner of Income Tax, Bombay Vs. Pannalal Narottamdas and Co., . It is also to be noted that in quantum appeal Tribunal had referred the following questions for opinion of this Court u/s 256(1) of the Act:

"(i) Whether on the facts and circumstances of the case the assessed is entitled to deduction of the payment of Rs.3 lakhs made u/s 125 of the Customs Act, 1961?

(ii) Whether on the facts and circumstances of the case, the assessed is entitled to deduction of the payment of Rs.50,000/- made u/s 11 of the Customs Act, 1962?"

5. Tribunal recorded a finding of fact that though assessed had failed to substantiate its Explanation but, certainly, its Explanation was bona fide. Reference was made to the bill of entry sent by the Korean company. It has been clarified by the Korean company that finished goods were supplied to the assessed company due to mistake in their computer. It is evident from record that after Customs authorities noticed about form of the cassettes, assessed took up the matter with the Korean company. It was clarified by the Korean company that mistake had been committed by them, and they same was due to computer mistake. Clarificatory letter issued by the Korean company was filed before the Assessing Officer. These aspects weighed with CIT(A) and the Tribunal for coming to the conclusion that all material facts had been disclosed and the claim for deduction was made bonafide. This factual conclusion does not seem to have any perversity. On the contrary, the same seems to have arrived at after considering all relevant aspects. Explanation 1(B) to Section 271(1)(c) prescribes that penalty can be imposed only if (a) assessed has not been able to substantiate the Explanation, (b) such Explanation was not bonafide, and (c) all the facts relating to the same and material to the computation of his total income have not been disclosed by him. Whether the Explanation is bonafide or not is a pure question of fact. In the circumstances, we find no merit in this appeal. It is accordingly dismissed.