

(2010) 08 DEL CK 0255
In the Delhi High Court
Case No : ITA 1067 of 2010

Commissioner of Income Tax-II

APPELLANT

Vs

Krishna Maruti Ltd.

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZO, 96ZQ
Central Excises and Salt Act, 1944 — Section 11A(2), 11AC
Income Tax Act, 1961 — Section 260A(1), 271, 271(1), 276C, 80IA

Citation : (2010) 08 DEL CK 0255

Hon'ble Judges : Dipak Misra, C.J.; Manmohan, J

Bench : Division Bench

Advocate : N.P. Sahni, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—The present appeal u/s 260A(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act, 1961") has been preferred by the appellant against the order dated 25.06.2009 passed by the Income Tax Appellate Tribunal, Delhi Bench "D", New Delhi (for short "the tribunal") in ITA No. 1794/Del/2008 for the assessment year 1997-98 with a prayer to set aside the orders passed by the Tribunal and the CIT (A) and to restore the order passed by the Assessing Officer. The facts which are necessitous to be adumbrated are that during the course of assessment proceeding, the Assessing Officer assessed the income of the assessee at Rs. 5,21,28,628/- as against the declared income of Rs. 4,49,56,750/-, disallowed the claim of deduction u/s 80IA of the Act and further imposed penalty of Rs. 49,78,202/-. Being aggrieved with the penalty order of the Assessing Officer, the assessee preferred an appeal before the CIT(A) who, by virtue of its order dated 20.02.2008, allowed the appeal of the assessee. Eventually the matter travelled to the tribunal which, vide its order dated 26.06.2009, relying on the order of the CIT(A), dismissed the appeal preferred by the revenue before it.

2. Before the tribunal, the revenue, the appellant herein, supporting the order of the Assessing Office, canvassed that by claiming wrong deductions u/s 80IA of the Act, additional depreciation and doubtful debts, inaccurate particulars of income have been furnished. The further submission was that when the disallowance of deduction u/s 80IA was not challenged by the assessee in appeal and was, in fact, accepted at the AO level, the penalty was rightly levied which ought to be restored.

3. In oppugnation of the aforesaid submissions and negating the contentions put forth by the revenue, the counsel for the assessee submitted before the tribunal that the assessee had not furnished inaccurate particulars or concealed any income inasmuch as a proper working for claim of deduction u/s 80IA was given along with the return of income and no particulars were erroneously mentioned or withheld.

4. After appreciating the rival contentions and on perusal of the material on record, the tribunal concurred with the view of the CIT (A) and affirmed the deletion of penalty imposed by the Assessing Officer on the assessee. The tribunal relied on the view taken by the CIT (A) and taking note of the position of law in this regard came to the conclusion that additional claim of depreciation due to non-allowance of set-off can neither be said to be an addition to the income of the assessee nor can non-allowing of bad debt claim per se amount to concealment or furnishing of inaccurate particulars and, therefore, penalty is not imposable on the self-same basis.

5. In this regard, we may profitably note to a three-Judge Bench decision rendered in *Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others*, In the said case, the Apex Court held that Dilip N. Shroff Karta of N.D. Shroff Vs. Joint Commissioner of Income Tax, Special Range Mumbai and Another, did not lay down the law correctly. Their Lordships referred to the anatomy especially the explanations to Section 271(1)(c) and 276C of the Act and came to hold as follows:

The Explanations appended to Section 272(1)(c) of the income tax Act entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The judgment in Dilip N. Shroff's case (supra) has not considered the effect and relevance of Section 276C of the Income Tax Act. The object behind the enactment of Section 271(1)(c) read with the Explanations indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution u/s 276C of the Income Tax Act.

6. It is worth noting that in the said case the Bench was also addressing penalty imposable u/s 11AC of the Central Excise Act, 1944 and the Central Excise Rules, 1944.

7. In Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills, their Lordships decision in the context of Section 11AC of the Central Excise Act, thus:

32. After referring to a number of decisions on interpretation and construction of statutory provisions, in ELT paragraphs 26 and 27 of the decision, the court observed and held as follows:

19. In Union Budget of 1996-97, Section 11AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given.

20. Above being the position, the plea that the Rules 96ZQ and 96ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff's case (supra) was not correctly decided but The Chairman, SEBI Vs. Shriram Mutual Fund and Another, has analysed the legal position in the correct perspectives. The reference is answered.

From the above, we fail to see how the decision in Dharamendra Textile can be said to hold that Section 11AC would apply to every case of non-payment or short payment of duty regardless of the conditions expressly mentioned in the section for its application. There is another very strong reason for holding that Dharmendra Textile (supra) could not have interpreted Section 11AC in the manner as suggested because in that case that was not even the stand of the Revenue.

34. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the Authority concerned would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under Sub-section (2) of Section 11A. That is what Dharamendra Textile decides. It must, however, be made clear that what is stated above in regard to the decision in Dharamendra Textile is only insofar as Section 11AC is concerned. We make no observations (as a matter of fact there is no occasion for it) with regard to the several other statutory provisions that came up for consideration in that decision.

8. Recently, in Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., a two-Judge Bench of the Apex Court while dealing with the concept of incorrect claim and the imposition of penalty u/s 271(1)(c) referred to the decision in Rajasthan Spinning and Weaving Mills (supra) wherein it had been held it goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist and proceeded to lay down as follows:

9. Therefore, it is obvious that it must be shown that the conditions u/s 271(1)(c) must exist before the penalty is imposed. There can be no dispute that

everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In *Dilip N. Shroff* (supra) this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty u/s 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of Section 271(1)(c) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessing officer must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in *Dilip N. Shroff* (supra) was upset. In *Union of India v. Dharamendra Textile Processors* (supra), after quoting from Section 271 extensively and also considering Section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of Section 271(1)(c) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution u/s 276C of the Act. The basic reason why decision in *Dilip N. Shroff* (supra) was overruled by this Court in *Union of India v. Dharamendra Textile Processors* (supra), was that according to this Court the effect and difference between Section 271(1)(c) and Section 276C of the Act was lost sight of in the case of *Dilip N. Shroff* (supra). However, it must be pointed out that in *Union of India v. Dharamendra Textile Processors* (supra), no fault was found with the reasoning in the decision in *Dilip N. Shroff* (supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in *Dilip N. Shroff* (supra) to the effect that mens rea was an essential ingredient for the penalty u/s 271(1)(c) that the decision in *Dilip N. Shroff* (supra) was overruled.

9. After so stating their Lordships referred to the meaning of the term "inaccurate" as per Webster's Dictionary and further opined thus:

A mere making of the claim, which is not sustainable in law, by itself, will not

amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

10. We have quoted in extenso to understand the basic circumstances which would warrant imposition of penalty.

11. In the case at hand, the tribunal has taken note of the stand of the assessee that it had not furnished inaccurate particulars or concealed any income. It is further urged that there are divergent views about the working of Section 80-IA of the assessee and he had accepted the order of the assessing officer on the basis of the authority of the Apex Court in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, The tribunal further took note of the fact that the assessee had furnished details in respect of making his claims but the assessing officer had not allowed the claims in respect of back dates. In this factual backdrop, the tribunal has opined thus:

In our view the same cannot be called furnishing of inaccurate particulars, but it amounts to taking one view from possible two views. Similarly in respect of additional depreciation the assessee had shown the basis for claim of additional depreciation of non allowance of the set off. In our view this also does not amount to furnishing inaccurate particulars. Further the claim of bad debts was made by assessee relying on its business acumen and were given appropriate treatment in the books of accounts, non allowing of bad debt claim per se will not amount to concealment or furnish inaccurate particulars in as much as the issue becomes subject to examination and holding a view. In view thereof CIT(A) has taken a proper approach by examining the facts and various case laws in deleting the penalty which is upheld.

12. The aforesaid factual matrix is tested on the touchstone of law laid down in Reliance Petroproducts (supra) which has placed reliance on Rajasthan Spinning and Weaving Mills (supra), from which it is clear as crystal that the assessee had in actuality neither provided inaccurate particulars nor had it concealed the income on its part. It had claimed certain allowances which were not accepted by the revenue. The explanation proffered by the assessee was a bona fide one in the factual backdrop. The conditions which are required to be in existence u/s 271C are not in existence. Thus, we are not inclined to dislodge the order passed by the tribunal.

13. Ex consequenti, we do not perceive any merit in this appeal and, accordingly, the same is dismissed in limine.