(2013) 01 GUJ CK 0066

In the Gujarat High Court

Case No : Tax Appeal No. 221 of 2012

Commissioner of Income Tax-IV APPELLANT

Vs

Shree Rama Multi Tech Ltd. RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:
Income Tax Act, 1961 — Section 271(1)(c), 80IA

Citation : (2013) 01 GUJ CK 0066

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Paurami B. Sheth, No. 1, for the Appellant;

Judgement

Akil Kureshi, J.—Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal (''the Tribunal'' for short) dated

21.10.2011 raising following question for our consideration:

Whether the Appellate Tribunal has substantially erred in deleting the penalty levied u/s. 271(1)(c) of the Act?

Issue pertains to penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act for different additions. When such penalty order passed was

challenged before the Commissioner (Appeals), while confirming the penalty on inflated purchase of Rs. 1.42 crores (rounded off) the

Commissioner deleted the penalty relatable to other additions and disallowances. To the extent the order was against the Revenue, the same was

challenged before the Tribunal. The Tribunal by the impugned order confirmed the same by making following observations:

We have heard the Ld. Representative of the parties. We notice that in quantum matter the assessee preferred appeal against the order of Ld.

CIT(Appeals) before ITAT and ITAT vide its order even dated has decided the issue as deleted the addition of Rs. 35,54,409/- made by

Assessing Officer in respect of set off the interest income. In respect of addition of Rs. 68.40 crores out of interest excess the issue has been sent

back to the file of Assessing Officer by the ITAT. The issues relating to disallowance of Rs. 54,71,162/- and Rs. 68.40 crores have also been sent

by to the file of Assessing Officer. Therefore, penalty u/s. 271(1)(c) is not sustainable. The penalty in respect of disallowance of deduction u/s.

80IA we find that this ground is squarely covered in favour of the assessee by the judgment of Hon''ble Apex Court in the case of Commissioner

of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., . Following the above judgment of the Hon''ble Apex Court we find that

penalty for disallowance of deduction u/s. 80IA is not sustainable. In the light of above discussion, we do not find any infirmity in the order of Ld.

CIT (Appeals) in respect of cancellation of penalty for which the Revenue is in appeal, the order of the Ld. CIT(Appeals) to that extent is

confirmed.

2. From the documents on record, it can be seen that part of the penalty was confirmed by the CIT(Appeals). However, with respect to the rest,

the same was deleted. The Tribunal concurred with such view of CIT (Appeals). Several additions were struck down in the assessment

proceeding itself and were sent for reconsideration. With respect to disallowance of deduction u/s 80IA of the Act, the authorities held that the

claim cannot be stated to be a wrong claim. Relying on the decision in the case of Reliance Petroproduct Pvt. Ltd., 322 ITR 172, such penalty was

deleted. To our mind, the entire issue is based on appreciation of facts. Substantial portion of the penalty deleted arose on account of additions not

being sustained. To the limited extent such penalty related disallowance of claim of deduction u/s 80IA of the Act, by virtue of decision in the case

of Reliance Petroproduct Pvt. Ltd., (supra), penalty could not have been imposed. No question of law arises. Tax Appeal is, therefore, dismissed.

