IN THE HIGH COURT OF DELHI

ITA No.160/2000

Date of Decision: 8th December, 2000

Commissioner of Income-tax-II & Anr.....Appellants

through: Mr.R.D.Jolly with
Ms.Prem Lata Bansal &
Mr.Ajay Jha, Advocates

Versus

M/s.Rahuljee & Co. .....Respondent

through: None

CORAM:

THE HON'BLE MR.JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE

THE HON'BLE MR.JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?

ARIJIT PASAYAT,C.J. (Oral)

In this appeal under Section 260-A 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 under Section 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

..contd/-

[Appeals] (in short 'CIT(A)) in an appeal filed by the assessee. 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. Assessee obtained order for supply of imported video cassettes to Czechoslovakia . It obtained import licence 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 assessee and then to be re-exported to Czechoslovakia. Goods were despatched by the Korean company to the assessee 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 assessee 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/-. Assessee claimed the said amount as deduction. However, Assessing Officer held that as this payment

..contd/-

was on account of breach of statutory rules relating to Customs duty and, therefore, was not allowable. He also initiated penal proceedings under Section 271(1)(c) of the Act. Against the disallowance assessee 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 assessee to show cause as to why penalty under Section 271(1)(c) of the Act should not be imposed. Assessee 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 leviability of such amount. It was claimed that the assessee had to export cassettes to Czechoslovakia; profit made therefrom 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

..contd/-

Commissioner of Income-tax (in short 'DCIT'). Assessee 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 assessee was bona fide or not. The facts of the case have been mentioned earlier. It is evident that the assessee has ordered for import of video cassettes in SKD form. Even the Korean company who supplied the goods to the assessee had mentioned so in the bill of entry. Subsequently even Korean company has clarified that the finished goods were supplied to the assessee 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 assessee 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 under Section 271(1)(c) was not attracted. We find that the CIT(A) has cancelled the penalty by holding that the explanation furnished by the assessee 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

..contd/-

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 assessee had committed a breach of rules". It was observed that assessee had claimed deduction relying on a decision of the Bombay High Court in Commissioner of Income-tax, Bombay v. Pannalal Narottamdas & Co. (1968) 67 ITR 667. It is also to be noted that in quantum appeal Tribunal had referred the following questions for opinion of this Court under Section 256(1) of the Act;

> "(i) Whether on the facts and circumstances of the case the assessee 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 assessee 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 assessee 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 assessee company due to mistake in their computer. It is evident from record that after Customs authorities noticed about form of the cassettes, assessee took up the matter with the Korean company. It was clarified by the Korean company that

mistake had been committed by them, and the 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) assessee 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.

CHIEF JUSTICE

D.K.JAIN,J.

8th December, 2000
"v"