



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 759/2005

COMMISSIONER OF THE INCOME TAX ..... Appellant  
Through: Mr.Sanjeev Sabharwal with  
Ms.Rashmi Chopra, Advs.

versus

M/S KAVITRA SILK & SAREES ..... Respondent  
Through: None.

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE B.N.CHATURVEDI

ORDER

08.12.2005

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The Tribunal has deleted the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 on the ground that the assessee had furnished all relevant particulars, which were noticed even by the Assessing Officer while reducing the assessee's claim for the deduction under Section 80 HHC of the Act. The Tribunal has observed:-

"It is observed that the addition in respect of which penalty has been levied by the Assessing Officer and confirmed by the Ld. CIT(A) u/s 271(1)(c), was entirely made on account of reduction in deduction claimed by the assessee u/s 80HHC. The said deduction in its return of income filed originally was claimed by the assessee on the basis of report issued by a Chartered Accountant in the prescribed form No.10CCAC and as rightly contended by the learned counsel for the assessee, the claim of the assessee for such deduction was based on bonafide belief. Moreover, all the particulars relevant to the said deduction was furnished by the assessee firm in its return of income which is evident from the fact that the



excess element in the said claim was noticed by the Assessing Officer from the return of income itself filed by the assessee. In the case of Kasinka Trading Vs. ACIT (supra) cited by the learned counsel for the assessee involving similar facts and circumstances, the Amritsar Bench of ITAT has held that the variation in the quantum of deduction U/s 80 HHC could not be treated as concealment of income or furnishing inaccurate particulars of income by the assessee so as to attract penalty U/s 271(1)(c). To the similar effect is the decision of Delhi SMC-II Bench of ITAT in the case of Maneesh Pipes Pvt. Ltd. (supra) which was rendered in the context of levy of penalty U/s 271(1)(c) in respect of reduction of deduction claimed by the assessee U/s 80-1A. In our opinion, both these decisions of the Tribunal are directly applicable to the facts of the present case and respectfully following the same, we hold that the penalty imposed by the Assessing Officer and confirmed by the Ld. CIT (A) u/s 271(1)(c) is not sustainable."

In the light of the above and keeping in view the fact that the Tribunal has recorded a finding of fact that the particulars furnished by the assessee were not inaccurate and the claim for deduction was itself based on a report submitted by the Chartered Accountant in the prescribed format, no substantial question of law arises for our consideration to warrant interference. This appeal accordingly fails and is hereby dismissed.

  
T.S. TRIAKUR, J

  
B.N. CHATURVEDI, J

DECEMBER 08, 2005

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