



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 616/2006

COMMISSIONER OF INCOME TAX V N Appellant
Through Mr.Sanjeev Sabharwal, Advocate

versus

M/S NATH BORS.EXIM INTERNATIONAL Respondent
Through Mr.O.S.Bajpai, Advocate

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
12.09.2006

%

The Revenue is aggrieved by an order dated 2nd September, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No. 1555(Del))2005 relevant for the assessment year 1996-97.

The only question that has arisen in this case is whether the assessee is liable for penalty under Section 271 (1) (c) read with explanation 1 (B) of the Income Tax Act, 1961. Learned counsel for the Revenue has taken us through the relevant provision and it appears on a reading thereof that before penalty can be imposed on the assessee, there are three requirements that have to be fulfilled, namely, that in respect of facts material to the computation of his total income, the assessee offers an explanation which he is not able to substantiate, that the assessee fails to prove that his explanation is bona fide and that the assessee has



not disclosed all the facts relating to his income and material to the computation of his total income.

In this case, the Tribunal has proceeded on a consideration of the third ingredient, which was not satisfied and, therefore, the penalty imposed on the assessee has been deleted.

The assessee had claimed dividend income as his business income and according to the assessee it was entitled to a deduction under clause (baa) of the Explanation to Section 80HHC (4C). In his return, in the computation of income a note was given by the assessee which read as follows:-

“Dividend Rs.14,11,930.00 (UTI – Rs. 14,10,474.00 and shares Rs.1456.00) and interest Rs.15,15,808.00 (FDRs Rs. 989062.00, Inter-Corporate deposit Rs.57,269.00, certificate of deposit with banks Rs.4,46,977.00, Bank of Baroda Bonds Rs.1619.00, Income Tax Department Rs.20,890/-) are claimed as business income chargeable under the head ‘Profit and gains of Business or Profession’ and profit derived from Industrial Undertaking at C-51, Sector-57, Noida.”

The Tribunal came to the conclusion that the assessee had disclosed all the facts, and therefore, even though it had made an erroneous claim which could not be justified in law, that by itself did not attract the penal provisions of the Act.

What is required to be considered is whether there was any enquiry that was required to be made by the Assessing Officer before concluding that the assessee had furnished inaccurate or false particulars. In this case we are of the view that no such enquiry was required to be made but there was only the need



for application of the law. On the legal position, the Assessing Officer was not satisfied and did not agree with the assessee but that by itself is not a ground to invoke the penal provision of the statute.

Learned counsel for the Revenue relied upon *Commissioner of Income Tax vs. Vidya Gauri Natverlal and Others (1999) 238 ITR 91*. In that case the question that arose was of unexplained cash credit. The Gujarat High Court made a distinction between a wrong claim as opposed to a false claim. In that case, the Assessing Officer needed to make an enquiry as to whether the claim of the assessee was right or not. In so far as the present case is concerned, the decision cited by learned counsel for the Revenue is clearly distinguishable.

We find that there was full disclosure of all relevant material. It cannot be said that the conduct of the assessee attracted the provisions of Section 271 (1) (c) of the Act.

In our opinion, no substantial question of law arises for our consideration.

Dismissed.

MADAN B. LOKUR, J

VIPIN SANGHI, J

SEPTEMBER 12, 2006

mw