



2#

: % 09.07.2009

Present: Ms. Rashmi Chopra, Adv. for the appellants.

+ITA No. 443/2009

The assessee had filed return declaring a loss of Rs.23,93,863/- for the assessing year for the year 2003-04. In this return, he *inter alia* claimed bad debts of Rs.87,14,984/-. During the assessment proceedings, the Assessing Officer vide its orders dated 09.11.2005 required the assessee to file the details of the bad debts of the aforesaid amount of Rs. 87,14,984/- and allowability of bad debts. The assessee vide its letter dated 22.03.2006 replied thereto by filing a note of allowability of bad debts. At the same time, he also filed revised return claiming bad debts at a lesser amount by reducing it to the extent of Rs.25,91,975/-. In the assessment order passed by the Assessing Officer, the revised claim of bad debts was allowed by the Assessing Officer and thus accepting that the assessee was entitled to claim the bad debts. However, the Assessing Officer was also of the opinion that the assessee had earlier claimed bad debts of higher amount and only after he was asked to furnish the details of the bad debts vide orders dated 09.11.2005, he reduced the claim of bad debts by Rs.25,91,975/-. He was of the opinion that in the original return filed by the assessee submitted



inaccurate particulars and thus penalty proceeding was initiated against him under Section 271(1)(c) of the Income Tax Act, 1961 resulting in orders dated 23.03.2006 imposing the penalty of Rs.8 lakhs.

The CIT in appeal set aside the aforesaid penalty orders on the ground that the assessee had furnished his explanation, which appeared to be *bona fide*. This finding that the explanation was *bona fide* has been affirmed by the ITAT in appeal as well.

We may note at this stage that even during the assessment proceedings, the assessee had explained to the Assessing Officer that it had appointed certain stockists, who in turn stated dealing in distribution on its advice. Therefore, the stockists in turn started supplying material to distributors. However, before such appointments, there were certain advance payments lying with the assessee. The dealing continued between the stockists and the distributors. As a result thereof, the advances lying with the assessee remained unadjusted as the material was being supplied by the stockists. Since the firm name of the distributors and the stockists were different, the balances continued as it is and could not be correlated inasmuch as the names of distributors and the stockists were different.



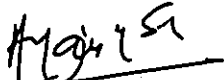
It was under these circumstances and as a cooperative measure that the assessee realized the aforesaid fact, it explained the bad debts by filing details of the amount in smaller amount. It was thus pleaded that there was no deliberate concealment or wrong particulars given by the assessee and the claim of bad debts originally made at Rs.87,14,984/-, wherein an amount of Rs. 25,91,975/- was not adjusted on account of aforesaid circumstances. It is this explanation, which was accepted by the CIT Appeal and has been affirmed by the ITAT as well. Thus, the finding of fact was arrived at that the assessee had not given inaccurate particulars. It is because of the reason that the assessee was able to offer satisfactory explanation, which was *bona fide* and all the facts relating to the same and material to the computation of the total income has been disclosed by him. No doubt, in the orders passed in CIT Appeal, it has referred to various judgments including *Dilip N. Shroff Vs. JCIT, Bombay*, 161 Taxman 218 (SC), which stands overruled and, thus, it cannot be disputed that no element of *mens rea* is required as to whether there is a concealment or not, but, at the same time, it also cannot be disputed that if the assessee is able to give satisfactory explanation in terms of Explanation 1(B) to Section 271(1)(iii), no penalty would be imposed upon such an assessee. As noted

④



two forums below had returned the finding of fact that the assessee  
been able to offer satisfactory explanation regarding his *bona fides*.

In these circumstances, we are of the opinion that no substantial  
question of law arise in this case. This appeal is accordingly dismissed.

  
A.K. SIKRI, J.

  
VALMIKI J. MEHTA, J.

July 09, 2009  
pmc