



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 912/2010

% **Judgment reserved on : 23rd July, 2010**
Judgment pronounced on : 13th September, 2010

Commissioner of Income Tax-IV, New Delhi Appellant
 Through: Mr.N.P. Sahni, Adv.

versus

M/s DHARAMPAL PREMCHAND LTD. Respondent
 Through: Mr. B. Gupta with Mr. R.K. Chawla,
 Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

DIPAK MISRA, CJ

In this appeal preferred under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') assailing the order dated 13th February, 2009 passed by the Income Tax Appellate Tribunal, Delhi Bench "B", New Delhi (for short 'the tribunal') in ITA No.2299/Del/2007 pertaining to the assessment year 2001-02 the revenue has raised the following substantial question of law:-

1. Whether the Income Tax Appellate Tribunal was correct in law and on facts in deleting the penalty of Rs.20,22,944/-, imposed by the Assessing Officer under section 271(1)(c) of the Income Tax Act?
2. Whether or not the findings recorded by the Income Tax Appellate Tribunal in its order are perverse in law, in as much as it has disregarded the relevant material and



appellant?

3. Whether in view of the facts and under the circumstances of the case the Tribunal was legally correct in dismissing the appeal of the department on the ground that “allocation of expenses between the head office and the unit would always be a debatable issue”.
 4. Whether the ITAT was legally correct to follow the decision of ITAT Jaipur Bench in the case of Harshvadhan Chemicals and Minerals Ltd. Vs. DCIT (1991) reported in 58 Taxman 234 which was based on sections 80 HH and 80 I of the Income Tax Act.
 5. Whether the ITAT was correct in law in not agreeing with the view of Assessing Officer that claiming expenses which would not have been debitable to the units in respect of which deduction U/s 80 IA of the Income Tax Act has been claimed and that it was a case of furnishing inaccurate particulars of income which attracts penalty U/s 271(1)(c).
 6. The appellant craves leave to add, alter or modify any question of law at the time of admission of appeal.
2. We have heard Mr. N.P. Sahni, learned senior standing counsel for the revenue and Mr. B. Gupta with Mr. R.K. Chawla, learned counsel for the Assessee.
3. At the very outset, we may state with profit that though number of substantial questions have been raised yet the real crunch of the matter is whether the tribunal has correctly declined to interfere with the appeal preferred by the revenue against the order of the CIT(A), who had expressed the view that the penalty proceedings under Section 271(1)(c) was



4. Presently to the factual setting. The assessee-respondent filed its return of income on 31st October, 2001 declaring the total income as nil. At the relevant time, the assessee was engaged in the manufacture of flavoured chewing tobacco and kiwam. The manufacturing units are located at Barotiwala (HP) and Agartala. Deduction was claimed under Sections 80-1A and 80-IB of the Act. Eventually, an assessment order was framed under Section 143(3) on 28th February, 2004 determining the income of the assessee at Rs.25,14,97,714/-. The penalty was computed at Rs.51,14,309/- as the deduction claimed under Sections 80-1A and 80-IB was not allowed.

5. Being dissatisfied with the said order, the assessee preferred an appeal before the CIT(A) and the CIT(A) reduced the allocation of expenses to Rs.44,68,845/-.

6. In the penalty proceeding, the assessee had filed its show cause contending, inter alia, that in its opinion the amounts that were disallowed did qualify for deduction under Sections 80-1A and 80-IB of the Act but the said explanation of the assessee was rejected and penalty was levied.

7. Before the CIT(A), it was contended that the assessee had disclosed all material facts pertaining to the computation of deduction admissible under Sections 80-1A and 80-IB. It was also contended that the directors' remuneration had been duly debited in the Head Officer and no amount was allocated towards the units. It was urged that the assessee was of the opinion



nexus to the business activities and, therefore, deduction of said amount would be admissible to the assessee. It was also put forth that there was no deliberate attempt on the part of the assessee to conceal the particulars of the income. The CIT(A) has elaborately dealt with the same and accepted the explanation proffered by the assessee. The tribunal referred to the order passed by the CIT(A) and thereafter has held as follows:-

“6..... On seeing the explanation of the assessee, the Assessing Officer may not levy the penalty upon an assessee. For such a view, learned CIT(Appeals) found support from the decision of Hon’ble Supreme Court in the case of Hindustan Steels Ltd. (supra). The CIT(Appeals) further relied upon the order of the ITAT, Jaipur Bench rendered in the case of Harshvardhan Chemicals & Minerals Vs. DCIT 58 Taxman 234. In that case also, the deduction admissible under sec. 80-HH and 80-I was reduced by the Assessing Officer. The ITAT observed that penalty under sec. 271(1)(c) would not be imposable upon the assessee in such situation because computation of deduction admissible under those provisions was a debatable issue. Similar are the facts before us. Allocation of expenses between the head office and the unit would always be a debatable issue. After considering the detailed order of the learned CIT(Appeals), we do not see any reason to interfere in it. Thus, the appeal filed by the revenue is dismissed.”

8. In this context, we may refer with profit a recent decision of the Apex Court in *Commissioner of Income Tax v. Reliance Petroproducts Pvt. Ltd.*, (2010) 322 ITR 158 (SC) wherein it has been held as follows:-

“9. Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In *Dilip N. Shroff v. Joint CIT*



“concealment of income” and “furnishing inaccurate particulars”. The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), mens rea was necessary, as according to the Court, the word “inaccurate” signified a deliberate act or omission on behalf of the assessee. It went on to hold that clause (iii) of section 271(1)(c) provided for a discretionary jurisdiction upon the assessing authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term “inaccurate particulars” was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the Assessing Officer must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff v. Joint CIT was upset. In Union of India v. Dharamendra Textile Processors, after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing return, there was no necessity of mens rea. The court went on to hold that the objective behind the enactment of Section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276C of the Act. The basic reason why decision in Dilip N. Shroff v. Joint CIT was overruled by this Court in Union of India v. Dharamendra Textile Processors, was that according to this Court the effect and difference between Section 271(1)(c) and Section 276C of the Act was lost sight of in the case of Dilip Shroff v. Joint CIT. However, it must be pointed out that in Union of India v. Dharamendra Textile Processors, no fault was found with the reasoning in the decision in Dilip N. Shroff v. Joint CIT, where the court explained the meaning of the terms



in Dilip N. Shroff v. Joint CIT to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in Dilip N. Shroff v. Joint CIT was overruled.

10. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:

“not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript.”

11. We have already seen the meaning of the word “particulars” in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

12 It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had



its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271 (1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.”

9. In view of the aforesaid law laid down by the Apex Court and the factual matrix which has been adverted to by the tribunal, we do not perceive any substantial question of law being involved in this appeal.

10. In the result, the appeal, being devoid of merit, stands dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 13, 2010
VK