



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

+ **ITA No.129 of 2009**

% Decision Delivered On: August 04, 2011

COMMISSIONER OF INCOME TAX – V, NEW DELHI

. . . Petitioners

Through: Ms. Rashmi Chopra,  
Sr. Standing Counsel.

VERSUS

NAVIN CHEMICALS MANUFACTURING CO. LTD.

. . . Respondents

Through: Nemo.

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI**  
**HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J. (ORAL)**

1. Nobody has appeared on behalf of the respondent in spite of service. The respondent was proceeded *ex parte* on the last date of hearing.
2. Admit. The following substantial question of law arises for consideration:

"Whether on the facts and in circumstances of the case, the learned Income Tax Appellate Tribunal erred in deleting the penalty of ₹26,63,370/- imposed under Section 271(1)(c) of the Income Tax Act, 1961?"



3. The learned counsel for the appellant/Revenue argued the matter finally. After hearing her, we proceed to decide the question of law framed above. This case relates to the Assessment Year 2001-02. The assessee was engaged in the manufacture of chemical formulations but had suspended all activities since past more than 20 years, i.e., 1984. The Assessing Officer (AO) rejected the claim of the assessee for business loss by observing that the assessee had suspended all sale/purchase/manufacturing operations since 1984 and by its own admission did not own/possess and/or occupy any property on rental basis. The AO rejected the claim of the assessee to set off the brought forward losses and depreciation against the Net Long Term Capital Gain for the year as per the provisions of Section 72 of the Income Tax Act (hereinafter referred to as 'the Act').
4. The CIT (Appeals) dismissed the assessee's appeal holding that expenses and business loss are allowable only if the juristic personhood of the company subsists. The CIT (A) upheld the disallowance of short term capital loss in the absence of evidence.
5. It seems that no further appeal was carried out by the assessee and the aforesaid order of the CIT (A) affirming the disallowance of the AO became final. The AO while passing the



assessment order had also proceeded with penalty proceedings under Section 271(1)(c) of the Act vide orders dated 24.09.2004 imposing the penalty of ₹26,63,370/-. The CIT (A) upheld the levy of penalty holding that the claim made by the assessee with regard to expenses or capital loss would amount to filing of inaccurate particulars. However, the Tribunal has deleted the penalty vide impugned order dated 20.12.2007. According to the Tribunal, explanation given by the assessee has not been proved to be *non-bona fide* or false as no income has been concealed, but only there was a difference of opinion. Against this order, the present appeal is filed.

6. As already pointed out above, in the return filed by the assessee, the assessee had claimed expenses like personnel expenses, other expenses comprising of legal and professional charges, travelling and conveyance, machinery repairs, business development expenses, commission, share issue expenses written off, etc. The AO had noted that there was no manufacturing and other activities by the assessee, which had been suspended for more than 20 years, i.e. 1984. There were no purchase and sale activities or any manufacturing activities have been carried out by the assessee since 1984. On query raised by the AO in claiming proceedings, the assessee submitted that it was not having any property in its possession



either on ownership or rental basis. In spite of this, the expenditure of aforesaid nature including stationery and printing, legal and professional charges, business and development expenses, machinery repairs, etc. expenditure had been claimed for which there was no justification.

7. The assessee had also claimed their term capital loans of ₹16,85,145/-, which was on the basis that plant and machinery was lying at the factory premises at Noida and M/s. HCLT Ltd. had not allowed the assessee to lift that after occupation, and junk part of the said machinery had been sold to a junk dealer for ₹62,850/- and balance had been written off. However, the assessee neither gave the particulars of the junk dealer, viz., his name, etc. to whom the machinery had been sold, nor he could produce invoice/sale agreement. Further, the AO took the view that merely because M/s. HCLT Ltd. had not allowed the to lift the plant and machinery would not mean that the machinery was not in existence. The plant and machinery was still in existence and owned by the assessee company. It was merely not in its possession for which the legal proceedings in respect thereof are still pending. Since the "block of assets" of plant and machinery still existed, question of allowing short term capital loss did not arise.



8. In the aforesaid context, we have to examine as to whether the claims made by the assessee were *bona fide* and there was no concealment as held by the Tribunal.
9. In view of the aforesaid admitted position, we are not in a position to accept the reasoning given by the Tribunal while deleting the penalty. When it has come on record that the assessee has not been engaging in business activities since 1984 claiming expenses on account of stationery and printing, personnel expenses, i.e. expenses for staff, travelling and conveyance or business development expenses or expenses on account of commission and machinery repairs would *prima facie* be a bogus claim. Once such a claim was made even when there was no business activity for the last 20 years of a huge amount of ₹64.84 lacs without any income from manufacturing or trading or any other business activities, there was heavy onus on the assessee to show other claims. The assessee could not demonstrate during the assessment proceedings which led to the disallowance of the expenses claimed. During the penalty proceedings, the only explanation of the assessee was that these expenses related to day-to-day keeping the company going on and so long as the company had the juristic personality subsisted, the normal day-to-day expenses were allowable. However, even if the company



existed on record, as it was not in operating, the fact remains that the manufacturing or any other activities closed for more than twenty years and further that no explanation was given to justify the so-called expenditure.

10. In these circumstances, the impugned order of the Tribunal treating the claim as *bona fide* or that it was a case of difference of opinion is not digestible, except referring to certain case laws, the Tribunal did not controvert the aforesaid reasoning which was given by the AO as well as CIT (A) while levying the penalty.
11. We are, therefore, of the opinion that the impugned order passed by the Tribunal is clearly erroneous. Neither the claim of the assessee was *bona fide*, nor was it a case of difference of opinion. Obviously, such huge claims were made with a purpose to conceal the income. We may record that in the income tax return filed by the assessee, it had shown income from interest at ₹4,45,107/-, profiting on sales of land and building to the tune of ₹1,11,43,816/- and balance written off as ₹23,492/-. To suppress this income, it had claimed the expenditure of ₹64,84,358/- on the aforesaid ground, which could not be justified by the assessee in the quantum proceedings and the assessee failed to provide any plausible explanation even during the penalty proceedings.



12. We, thus, answer the question in favour of the Revenue and against the assessee and as a result, this appeal is allowed. Impugned order of the Tribunal is set aside and the orders of the AO as well as CIT (A) of penalty are restored.

A handwritten signature in black ink, appearing to read 'A.K. Sikri'.

**(A.K. SIKRI)**  
**JUDGE**

A handwritten signature in black ink, appearing to read 'M.L. Mehta'.

**(M.L. MEHTA)**  
**JUDGE**

**AUGUST 04, 2011**

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