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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 755/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Karan Khanna, Sr. Standing Counsel
with Ms. Asmita Kumar, Advocate.

versus

SAIN PROCESSING AND WEAVING
MILLS P.LTD. Respondent
Through: Mr. Ajay Vohra with Ms. Kavita Jha
and Mr. Somnath Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER
04.12.2012

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1. The question of law framed in this case is as follows: -
"Whether, on the facts and circumstances of the case, the ITAT erred in deleting the penalty imposed under Section 271 (1) (c) of the Income Tax Act, 1961?"
2. The brief facts of the case are that the assessee company filed its return for AY 2000-01 declaring NIL total income; it was processed under Section 143 (1) (a) of the Act. The total income



of the assessee was determined as Rs.61,67,630/- after disallowing the claim for set off of brought forward losses by way of “prima facie adjustment”. The assessee had appealed to the Commissioner who deleted the *prima facie* adjustment observing that it was beyond the scope of adjustment permissible under Section 143 (1).

3. The Revenue sought to reopen the proceedings under Section-147/148 through notice dated 15.2.2005. In the return filed during the re-assessment proceedings, the assessee declared the same amount but included the income of Rs.51,32,495/- on 16.03.2005 under the head of “income from property”. In this return, there was no claim for brought forward adjustment. The assessment was completed by the AO on 31.03.2006 and the plea of the assessee was accepted; however, penalty proceedings were initiated by the AO. The assessee in response stated that the return of income filed originally had followed the same pattern as in the previous case when the said income was reported to be business income and similar adjustment was claimed. It was also urged in addition that the fresh return filed in re-assessment proceedings had reported the correct head upon legal advice being secured in that regard. The AO, however, rejected the plea and imposed penalty of Rs.24,70,715/- under Section-271 (1) (c). The CIT (A) allowed the appeal and cancelled the penalty holding as follows: -

“4. I have considered the facts and circumstances of the case, the reasoning of the AO and the submissions of the assessee and I find that in the original return of income the assessee had made a full and correct



disclosure of its income under the head "Business Income". Subsequently, on receipt of 148 notice, the same was offered to tax under the head "Income from House Property", based on the legal advice that there was no prospects of business being revived and continued in future years. In such facts and circumstances of the case, and in view of the fact that all disclosures had been made in the original return, as to the factum of the factory buildings and godowns being given on rent. The assessee cannot be faulted for either concealing the particulars of his income or filing inaccurate particulars of income. In fact, the rent received was also disclosed as income in the said return of income. In such facts and circumstances of the case, I am of the opinion that the assessee cannot be penalized u/s 271 (1) (c).

Apart from above, it is also settled law that a return filed in response to notice u/s 148 has to be treated at par with a return filed u/s 139. Hence, if the returned and assessed income are same, the assessee cannot be faulted by being penalized u/s 271 (1) (c). In the facts of the instant case the return of income filed by the assessee, in response to notice u/s 148 discloses the same total income as computed by the A.O. in the said assessment order. On this ground also the penalty levied u/s 271 (1) (c) deserves to be cancelled."

4. The Tribunal upon the Revenue's appeal dismissed its contentions holding that since in the re-assessment proceedings, the assessee had correctly stated the facts, there was no question of imposing penalty. It is urged on behalf of the Revenue that the position of law as appreciated by the Tribunal is incorrect.
5. The above narrative would reveal that the assessee had as a matter of fact reported the income though under a different head. In this,



it appears to have followed the previous year's pattern claiming it to be business income. During the re-assessment proceedings on receipt of legal advice, it corrected itself and reported the income as arising from the property. In these circumstances, initiation of penalty proceedings was not justified. However, as far as the question of law is concerned, this Court is conscious that the proposition of law, on which the Tribunal rested its decision is too broadly stated, i.e., that as the assessee in re-assessment proceedings corrected itself, no question of imposition of penalty arises under Section-271 (1) (c). There cannot be any blanket conclusion in that regard; every case would depend on its facts and circumstances. However, in the present case, this Court is satisfied that the initial initiation of penalty proceedings itself was not justified since the amounts have been specifically declared by the assessee in the original return, though under the head "business"; there was no variation in the amount except to the extent that the head of income was modified.

6. Having regard to the conclusions that the Court has drawn, even while, the question of law is answered in favour of the Revenue; its appeal cannot be accepted. ITA-755/2009 is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'S. Ravindra Bhat'.

S. RAVINDRA BHAT, J

DECEMBER 04, 2012/vks/

A handwritten signature in black ink, appearing to read 'R.V. Easwar'.

R.V.EASWAR, J