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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**INCOME TAX APPEAL NO. 98/2013**

**Reserved on: 13<sup>th</sup> August, 2013**

**Date of decision: 30<sup>th</sup> August, 2013**

COMMISSIONER OF INCOME TAX DELHI-IV

..... Appellant

Through Mr. Sanjeev Sabharwal, Sr.  
 Standing Counsel & Mr. Puneet Gupta, Jr.  
 Standing Counsel.

versus

DCM LIMITED

..... Respondent

Through Nemo.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**SANJIV KHANNA, J.:**

This appeal under Section 260A of the Income Tax Act, 1961 (Act, for short) by Commissioner of Income Tax, Delhi-IV (hereinafter referred to as the appellant/Revenue) is directed against order of the Income Tax Appellate Tribunal dated 13<sup>th</sup> April, 2012 in the case of DCM Limited, and relates to Assessment Year 2002-03.

2. The contention of the Revenue is that penalty for concealment under Section 271(1)(c) of the Act was rightly imposed as during the course of the assessment proceedings the assessee had made



a wrong claim in respect of loss suffered on writing off loan Rs.98.55 lacs, which was granted to DCM International Limited, a subsidiary company for acquiring shares of DCM Toyota Limited. DCM International Limited suffered losses and was not in a position to repay the loan and the same was written off as bad or doubtful debt.

3. The assessee is a limited company engaged in the business of manufacture of textile yarn, sale etc. and information technology related services. For the year ending 31<sup>st</sup> March, 2002, the assessee filed original return on 30<sup>th</sup> October, 2002 showing business loss of Rs.36,60,53,984/- and capital loss of Rs.39,80,76,080/-. This return was processed under Section 143(1) of the Act. Subsequently, the return was revised on 27<sup>th</sup> February, 2003, declaring business loss of Rs.11,72,50,688/- and capital loss of Rs.13,02,27,759/-. Along with these two returns, the assessee, however, had not filed tax audit report under Section 44AB of the Act. It was, however, stated that a scheme for restructuring of business was pending before the High Court and certain directions had been issued for preparation/presentation of accounts. Subsequently, another revised return was filed on 31<sup>st</sup> March, 2004 with audited accounts and tax audit report under Section 44AB. In this return, the business loss was revised to Rs.17,18,82,234/- and capital loss was computed at Rs.7,99,82,494/-. This computation was again revised on 30<sup>th</sup> October, 2004 and the



business loss was shown as Rs.15,28,61,385/-.

4. The last revised return was taken up for scrutiny by issue of notice under Section 143(2) of the Act. During the course of assessment proceedings, the assessee in the revised computation had claimed that the loss of Rs.98.55 lacs on account of loan granted to its subsidiary DCM International Limited, which was written off, was deductible as business expenditure or in alternative the same should be considered as a capital loss. The assessee had relied upon case law. The Assessing Officer did not agree and held that loss suffered by writing off loan given to DCM International Limited was not allowable as business expenditure and in earlier year interest has been disallowed as the loans were not given for business consideration. He observed that it made no difference whether DCM International Limited was wholly owned subsidiary and rejected the contention of the assessee that the loss/advance was with the intention of carrying on business through the subsidiary company. The contention of the assessee that the loss was a capital loss was also rejected on the ground that the loan was not a capital asset. The fact that loan was granted and had not been paid and was rightly written off was not disputed/challenged.

5. Aforesaid order of the Assessing Officer has attained finality and was not interfered or reversed in the appellate proceedings.

6. Penalty proceedings for concealment under Section 271(1)(c)



were invoked and vide order dated 31<sup>st</sup> December, 2009 penalty Rs.35,18,326/- being 100% of tax sought to be evaded on Rs.98,55,254/- was levied. The penalty order does not deal with the merits and whether there was any justification or ground to impose penalty. It has dealt with certain other issues regarding limitation etc. and only records that the claim of the assessee with regard to the loan had been rejected by the tribunal.

7. Commissioner of Income Tax (Appeals) upheld the order imposing penalty, inter alia, observing that a wrong claim had been made before the Assessing Officer during the course of the assessment proceedings, though no such claim had been made in the return of income, profit and loss account, etc. This, it was held, was immaterial because the claim had been made by way of a letter before the Assessing Officer, when the assessment proceedings were pending. He observed that the assessee should not and cannot take the risk of making a wrong claim by filing revised computation of income during the assessment proceedings, instead of making the claim in the return of income. The claim was made by way of a letter or revised computation before the Assessing Officer, which was considered and rejected and thus on merits, penalty under Section 271(1)(c) should be imposed.

8. Tribunal has reversed the findings of the Assessing Officer and



the CIT (Appeals) after recording that the claim was not made in the return of income, claim was made during the course of the assessment proceedings before the Assessing Officer and, therefore, it cannot be said that there was concealment of income as such. Reference was made to the decision of the Supreme Court in *Commissioner of Income Tax versus Reliance Petroproducts Private Limited*, (2010) 322 ITR 158 (SC) wherein it has been held that where an assessee makes a bona fide legal claim but the same is not accepted, penalty should not be levied, provided the assessee has disclosed all material particulars of his income and there was no concealment of facts.

9. We do not see any ground or reason to interfere with the impugned order passed by the tribunal. It is apparent that the last return filed by the assessee was taken up for scrutiny assessment. In the original return no claim on account of capital or business loss of Rs.98,55,254/- as bad debt written off on account of loan given to DCM International Limited was claimed. When the assessment proceedings were pending scrutiny and detailed or regular assessment proceedings had been initiated by way of a letter or re-computation statement, the said claim was made before the Assessing Officer. It is obvious and crystal clear that the assessee was aware that this claim would be examined by the Assessing Officer and the claim was put forward on the basis that DCM International Limited was a subsidiary



company and the loan granted to them was for specific purpose and for the benefit of the holding company. It is not disputed or denied that the loan in fact was granted and has been also written off. There was no concealment or furnishing of inaccurate facts. The legal position put forward by the respondent assessee that the loan unpaid and written off should be either treated as business loss or alternatively as capital loss was rejected. We fail to understand how and for what reason, penalty for concealment can be imposed in the present case. Case is completely covered by Explanation I. It is not disputed that full factual matrix or the facts were before the Assessing Officer at the time of assessment when this claim was made. The fact that scrutiny assessment was pending is a relevant and important circumstance to show the bona fides of the assessee as he was aware that the claim would be examined and would not go unnoticed. Secondly, the claim was rejected in view of the legal position, which was against the assessee and not because of statement of incorrect or wrong facts.

10. Law does not bar or prohibit an assessee for making a claim, which he believes may be accepted or is plausible. When such a claim is made during the course of regular or scrutiny assessment, liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinized both on facts and in law. Full probe and appraisal is natural and normal. Threat of penalty cannot become a gag and/or



haunt an assessee for making a claim which may be erroneous wrong, when it is made during the course of the assessment proceedings. Normally, penalty proceedings in such cases should not be initiated unless there are valid or good grounds to show that factual concealment has been made or inaccurate particulars on facts were provided in the computation. Law does not bar or prohibit a person from making a claim, when he knows the matter is going to be examined by the Assessing Officer. There is no merit in the present appeal and the same has to be dismissed.

**(SANJIV KHANNA)**  
**JUDGE**

**(SANJEEV SACHDEVA)**  
**JUDGE**

**AUGUST 30<sup>th</sup>, 2013**  
**VKR**