

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 29.01. 2013

+ **ITA 48/2013**
ITA 49/2013

COMMISSIONER OF INCOME TAX (CENTRAL-I)

... Appellant

versus

JAKSON LTD.

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Rajpal, Sr. Standing Counsel

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

These appeals by the revenue arise out of the common order dated 22.06.2012 passed by the Income Tax Appellant Tribunal in ITA No.4076/Del/2011 and 4073/Del/2011 pertaining to the assessment years 2003-04 and 2004-05.

2. In both these matters the question is with regard to penalties under section 271(1)(c) of the Income Tax Act, 1961. In respect of the assessment year 2003-04 the penalty imposed by the assessing officer

was ₹15.4 lakhs whereas in respect of the assessment year 2004-05 the penalty amount was ₹9.30 lakhs. In both the cases the penalty was imposed because of the reason that the deduction claimed under section 80-IB by the respondent-assessee was ultimately allowed at a lower level. We may take the case of the assessment year 2003-04. Initially, the assessee had claimed deduction under section 80-IB of ₹2,52,41,632/-. However, subsequently the respondent-assessee filed a revised return in which he claimed an enhanced deduction under section 80-IB of ₹2,67,48,176/-. In the penalty proceedings the computation with regard to the deduction under section 80-IB has ultimately been taken at ₹2,52,41,632/-, which is the same as the amount claimed by the respondent-assessee at the time of filing of the original return. The penalty has been levied on the respondent-assessee because the claim under section 80-IB in the revised return has not been accepted and has been reduced to ₹2,52,41,632/-. Similar facts have arisen in respect of the assessment year 2004-05.

3. The Commissioner of Income Tax(Appeals) had deleted the said penalty and the revenue was in appeal before the Tribunal.

4. The Tribunal after examining the facts and circumstances of the case found that the same was covered by the Supreme Court decision in the case of **Commissioner of Income Tax v. Reliance Petroproducts (P) Ltd.:** (2010) 322 ITR 158 SC. The Supreme Court, in that decision, was also concerned with penalty under section 271(1)(c) of the said Act. The Supreme Court observed as under:-

“9. 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.”

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.”

5. It is apparent from the above extract, that the mere making of a claim which is ultimately held not to be sustainable in law, would not amount to furnishing inaccurate particulars regarding the income of an assessee. In the present appeals it is only that the claims of deduction under Section 80IB have been downscaled. This, by itself, would not mean that it is a case of furnishing inaccurate particulars of income. Furthermore, there is no finding in the penalty order as to which part of the income the assessee had concealed and with regard to which particular facet of his income had the assessee provided inaccurate particulars thereof. In these circumstances, we feel that the Tribunal has correctly applied the decision of the Supreme Court in the case of **Reliance Petroproducts (P) Ltd.** (*supra*). No substantial question of law arises for our consideration in these appeals. The appeals are dismissed.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 29, 2013/hs