IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 221 of 2012

==========

COMMISSIONER OF INCOME TAX - IV....Appellant(s)

Versus

SHREE RAMA MULTI TECH LTD....Opponent(s)

==========

Appearance:

MS PAURAMI B SHETH, ADVOCATE for the Appellant(s) No. 1

==========

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 21/01/2013

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ('the Tribunal' for short) dated 21.10.2011 raising following question for our consideration :

> "Whether the Appellate Tribunal has substantially erred in deleting the penalty levied u/s.271(1)(c) of the Act?"

Issue pertains to penalty imposed by the Assessing Officer under section 271(1)(c) of the Act for different additions. When such penalty order passed was challenged before the Commissioner (Appeals), while confirming the penalty on inflated purchase of Rs.1.42 crores (rounded off) the Commissioner deleted the penalty relatable to other additions and disallowances. To the extent the order was against the Revenue, the same was challenged before the Tribunal. The Tribunal by the impugned

order confirmed the same by making following observations:

> "We have heard the Ld. Representative of the parties. We notice that in quantum matter the assessee preferred appeal against the order of Ld. CIT(Appeals) before ITAT and ITAT vide its order even dated has decided the issue as deleted the addition of Rs.35,54,409/- made by Assessing Officer in respect of set off the interest income. In respect of addition of Rs.68.40 crores out of interest excess the issue has been sent back to the file of Assessing Officer by the ITAT. The issues relating to disallowance of Rs.54,71,162/- and Rs.68.40 crores have also been sent by to the file of Assessing Officer. Therefore, penalty u/s.271(1)(c) is not sustainable. The penalty in respect of disallowance of deduction u/s.80IA we find that this ground is squarely covered in favour of the assessee by the judgment of Hon'ble Apex Court in the case of CIT v. Reliance Petroproduct Pvt. Ltd. (2010) 322 ITR 172 (SC). Following the above judgment of the Hon'ble Apex Court we find that penalty for disallwoance of deduction u/s.80IA is not sustainable. In the light of above discussion, we do not find any infirmity in the order of Ld. CIT (Appeals) in respect of cancellation of penalty for which the Revenue is in appeal, the order of the Ld. CIT(Appeals) to that extent is confirmed."

From the documents on record, it can be seen that part of the penalty was confirmed by the CIT(Appeals). However, with respect to the rest, the same was deleted. The Tribunal concurred with such view of CIT (Appeals). Several additions were struck down in the assessment proceeding itself and were sent for reconsideration. With respect to disallowance of deduction under section 80IA of the Act, the authorities held that the claim cannot be stated to be a wrong claim. Relying on the decision in the case of Reliance Petroproduct Pvt. Ltd., 322 ITR 172, such penalty was deleted.

To our mind, the entire issue is based on appreciation of facts. Substantial portion of the penalty deleted arose on account of additions not being sustained. To the limited extent such penalty related disallowance of claim of deduction under section

80IA of the Act, by virtue of decision in the case of Reliance Petroproduct Pvt. Ltd., (supra), penalty could not have been imposed. No question of law arises. Tax Appeal is, therefore, dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

(vjn)