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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1332 OF 2011

The Commissioner of Income Tax-I, Mumbai

..Appellant.

V/s.

Somany Evergree Knits Ltd.

..Respondent.

Mr. Vimal Gupta, Senior Advocate with Ms. Padma Divakar for the appellant.

Mr. Nikhil Rajani i/b. V. Deshpande & Co. for the respondent.

CORAM : J.P. DEVADHAR AND  
M.S. SANKLECHA, JJ.

DATED : 21ST MARCH, 2013

**P.C. :-**

1. In this appeal by the revenue for the assessment year 2003-04, following questions of law have been raised for our consideration :-

- A. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied by the assessing officer u/s.271(1)(c) of the Income Tax Act even though the assessee had accepted in assessment proceedings that it had filed inaccurate particulars of income by claiming excess depreciation amounting to Rs.32,51,161/- in its return of income ?
- B. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied by the assessing officer u/s.271(1)(c) of the Income Tax Act even

though the assessee had accepted in assessment proceedings that it had filed inaccurate particulars of income by wrongly claiming loss on sale of garment unit amounting to Rs.21,68,597/- as a revenue deduction in its return of income ?

2. Regarding question A:

(i) The respondent-assessee had in its return of income claimed depreciation at Rs.1.70 crores. During the assessment proceedings, the respondent-assessee realised that it had wrongly claimed Rs.1.70 crores of depreciation instead of Rs.1.05 crores. This excess claim for depreciation had happened due to a mistake in calculation i.e. Instead of reducing the amount the amount of Rs.32.51 lakhs from Rs.1.38 crores, the amount of Rs.32.51 lakhs was added to Rs.1.38 lakhs resulting in claim for depreciation at Rs.1.70 crores. The Assessing Officer did not accept that it was a mistake and levied penalty under Section 271(1)(c) of the Income Tax Act, 1961 (the Act).

(ii) The CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal held that excess depreciation originally claimed was on account of bonafide and inadvertent mistake on the part of the respondent-assessee. In any case, during the course of the assessment proceedings, the assessee realised its mistake and pointed out the same. The Tribunal held that mistake should not be

visited with penalty.

(iii) The grievance of the revenue is that the mistake ought to have been rectified by filing a revised return of income. The Tribunal held that the time to file a revised return had expired. In any event, it is not disputed that it was a bonafide mistake on the part of the respondent-assessee. In that view of the matter, imposition of penalty was not warranted.

(iv) Since the order of the Tribunal on the above issue is based on a finding of fact, we see no reason to entertain question A.

3. Regarding question B:

(i) The respondent-assessee had during the assessment year sold its garment manufacturing machine and claimed a loss of Rs.21.68 lakhs thereon as a revenue expenditure in its return of income. In the course of the assessment proceedings, the respondent-assessee realised its mistake and withdrew the above loss shown as revenue expenditure in its profit and loss account and in the consequent return of income. The Assessing Officer accepted the above withdrawal and completed the assessment. However, he

imposed penalty under Section 271(1)(c) of the Act.

(ii) In appeal, the CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal by the impugned order records a finding that in the profit and loss account filed along with the return of income, the respondent-assessee has clearly described the loss as the loss on sale of its garment unit assets. This loss was added to the net loss in the computation of the total income. Thus, there was complete disclosure. The Tribunal further records that the above loss was claimed by the respondent-assessee as a revenue expenditure as the Chartered Accountant did not advise them correctly as to the legal position. However, during the assessment proceedings, the mistake was noticed and corrected by the respondent-assessee. On the above facts, the Tribunal concluded the claim for deduction made by the respondent-assessee was on account of a bonafide mistake and in such circumstances, the levying of penalty was not justified.

(iii) The grievance of the revenue is that penalty is justified in view of the fact that the respondent-assessee had not filed a revised return of income. However, the Tribunal noted that the time to file revised return had expired. In any event, even the revenue does not dispute that it was a bonafide mistake on the part of the respondent-

assessee. In the above view, imposition of penalty upon the respondent-assessee is not warranted.

(iv) Since the decision of the Tribunal is based on finding of fact, we see no reason to entertain question B.dated 6th

4. Accordingly, the appeal is dismissed with no order as to costs.

(M.S. SANKLECHA, J.)

(J.P. DEVADHAR, J.)