

Chief Justice's Court

Case :- INCOME TAX APPEAL No. - 103 of 2014

Appellant :- Commissioner Of Income Tax

Respondent :- M/S Triveni Engineering & Industries Ltd.

Counsel for Appellant :- Dhananjay Awasthi

Counsel for Respondent:- R.S. Agarwal, Rohit Jain

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice

Hon'ble Dilip Gupta, J.

The appeal by the Revenue under section 260A of the Income Tax Act, 1961 arises from an order passed by the Income Tax Appellate Tribunal on 7 February 2013 in so far as the Tribunal deleted the levy of penalty under section 271(1)(c) of Rs.77,89,965/- towards interest on Sugar Development Fund (SDF). The assessment year to which the appeal relates is A.Y. 2000-01.

The following questions of law have been raised by the Revenue in the appeal.

“1. Whether the ITAT erred in law in interpreting the language and provisions of Section 271(1)(c) which only talks of initiation of penalty in “course of any proceedings” and there is no condition in the language of the Section which calls for recording of satisfaction before initiation of u/s 271(1)(c).

2. Whether the ITAT erred in law in not considering the provisions of Explanation 7 (1B) to section 271 which clearly indicates that where any order of assessment contains a direction for initiation of penalty under clause (c) of sub-section (1), such an order shall be deemed to constitute satisfaction of the A.O for initiation of penalty proceedings.

3. Whether the ITAT erred in law by interpreting new conditions in the language and provision of section 271(1)(c) which was not originally intended by the legislature and would amount to “casus omissus”.

The Assessing Officer made an order of assessment under section 143(3) on 31 March 2003. At this stage, it would be material to note that the Assessing Officer specifically dealt with various items which are as follows:-

- (i) Software expenses ;
- (ii) provision for gratuity ;
- (iii) short charging of interest on loan/advance to sister concern ;
- (iv) interest on SDF loan ;
- (v) lease adjustment charges ;
- (vi) provision for cost of completion of jobs
- (vii) bad debts and amounts written off ;
- (viii) commission paid ;
- (ix) foreign exchange fluctuation ; and
- (x) depreciation.

Under each of the aforesaid heads, where the Assessing Officer considered it necessary to initiate penalty proceedings under section 271(1)(c), there was a specific direction to that effect. Consequently, the Assessing Officer specifically directed under the head of software expenses ((i) above) that a penalty under section 271(1)(c) is initiated for claiming excessive deduction. Proceedings under section 271(1)(c) were also directed to be issued in respect of a claim for wrong deduction on account of a provision made for gratuity (Item No.(ii) above); bad debts and amounts written off

(Item No.(vii) above); commission paid (Item No.(viii) above); foreign exchange fluctuation (Item No.(ix) above); and depreciation (Item No.(x) above). Significantly, the Assessing Officer did not direct the initiation of any penalty under section 271(1)(c) in respect of the other heads including in particular on the aspect of interest on SDF loan. In the concluding part of the order, the Assessing Officer observed as follows:-

“Assessed at Business Loss of (-) Rs. (-) 14,03,30,430/-. Issue necessary forms. Issue penalty notice u/s 271(1)(c) **as discussed above.**”

(emphasis supplied)

Consequently, the Assessing Officer had directed the issuance of a penalty notice under section 271(1)(c) as discussed above. Where the Assessing Officer considered it appropriate to initiate penalty proceedings, he had made a specific direction to that effect. The Tribunal, while deleting the penalty under section 271(1)(c) on the interest on the SDF loan, observed as follows:-

“In view of above, we observe that in the original assessment order, the Assessing Officer has made multiple additions by making disallowances and after conclusion of every issue and addition, he has specifically mentioned his satisfaction about initiation of penalty proceedings related to that issue and at the end of the order, he stated that issue penalty notice u/s 271(1)(c) as discussed above. But at the same time, on careful reading of para 5 of assessment order pertaining to the interest on SDF loan, we observe that after para 5.4, there is nothing to show that the Assessing Officer has recorded his satisfaction as required by the statute for initiation of penalty proceedings.”

The submission which has been urged on behalf of the Revenue is that under sub-section (1B) of section 271, a deeming fiction has been made of circumstances in which an order of assessment shall be deemed to be a satisfaction of the Assessing Officer for initiation of penalty proceedings under clause (c) of section 271(1). In the present case, it has been submitted that since the Assessing Officer had made a disallowance that would amount to a deeming satisfaction.

Section 271(1)(c) empowers *inter alia* the Assessing Officer, where he is satisfied in the course of any proceedings under the Act that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income, to direct the payment of penalty. Sub-section (1B) was introduced by way of an amendment by the Finance Act, 2008 with retrospective effect from 1 April 1989. Sub-section (1B) reads as follows:-

“(1B)- Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c).”

In order that the deeming fiction in sub-section (1B) must apply, two requirements must be fulfilled. The first requirement is that an amount must have been added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment. The second is that the

order of assessment or reassessment must contain a direction for the initiation of penalty proceedings under clause (c) of sub-section (1) of section 271. Where both the conditions as aforesaid are fulfilled, the order of assessment must be deemed to constitute satisfaction of the Assessing Officer for initiating penalty proceedings under clause (c).

In the present case, we have duly perused the entire order of assessment under section 143(3) which has been placed on record. From the order, it is abundantly clear that in respect of those heads where the Assessing Officer considered it appropriate to initiate penalty proceedings under section 271(1)(c), he made a specific direction to that effect. In respect of the claim of interest on the SDF loan, there is no direction by the Assessing Officer. The only observation by the Assessing Officer in respect of that component is as follows:-

“5. Interest on SDF Loan:

5.1 As per point no.17 of the notes of the statement of income it is stated as under :

“The erstwhile Triveni Engg. & Industries Ltd. as earlier being providing interest on loan from Sugar Development Fund in its books on accrual basis but the unpaid amounts have been disallowed by the department u/s 43B in earlier assessments holding SDF to be a financial institution against which the assessee is in appeal in the respective years. During the previous years relevant to this assessment year, the assessee company has paid interest of Rs.14.40 lacs out of the amounts provided earlier. The actual payment now having been made in this year, the assessee has claimed the amount of Rs.14.40 lacs as deductible u/s 43B, since the provisions made in earlier years have not been allowed. In case the assessee succeeds in its appeal the amount claimed this year shall be offered for tax.”

5.2 On examination of the record of earlier years, it is found that in the earlier years, the Assessing Officer in the case of the assessee company has disallowed the provision of interest on loan from Sugar Development Fund u/s 43B holding SDF to be a financial institution. This year on checking the details of interest accrued but not due, it has been found that following amount of interest which have accrued during the year have either been not paid or paid after filling of Return:

DEOBAND UNIT

		Amount	Date of Payment
(i)	SDF SOFT LOAN	Rs.88,767/-,	29.01.2001
(ii)	SDF MODERN	Rs.69,75,000/-	Not yet paid
(iii)	SDF (CANE DEV)	Rs.4,27,420/-	10.02.2001

KHATAULI UNIT

(iv)	S.D.F.-MOD-ISO	Rs.66,575/-,	22.01.2001
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RAM KOLA UNIT

(v)	SDF NEW DELHI	Rs.2,32,203/-	31.03.2001
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Total Interest on SDF Loan Rs.77,89,965/-

5.3 Therefore unpaid or late paid amount of Rs.77,89,965/- on account of SDF Loan is disallowed u/s 43B following the decision of the department in earlier years that Sugar Development Fund is a Financial Institution.

5.4 Following the above stand of the department, deduction of Rs.14,40,000/- as interest paid on SDF loan is allowed to the assessee on payment basis. However, the whole computation with regard to allowability of this interest will be revived on final outcome of pending appeal.”

The absence of a reference to the initiation of proceedings under section 271(1)(c) is not an inadvertent omission since it is clear that in respect of several other heads, where the Assessing Officer did consider it appropriate to initiate penalty proceedings, he made an observation to that

effect. In fact, even in the concluding part of his order, the Assessing Officer issued a direction for initiating penalty notice under section 271(1)(c) “as discussed above”. The expression “as discussed above” is material because it refers to those heads in respect of which a specific direction was issued by him for initiating steps under section 271(1)(c). Undoubtedly, as held in the decision of the Supreme Court in **Mak Data Private Limited Vs. Commissioner of Income Tax**¹, the Assessing Officer has to satisfy himself whether penalty proceedings should be initiated or not during the course of assessment proceedings and he is not required to record his satisfaction in a particular manner or reduce it into writing. However, in the present case, there is no direction whatsoever by the Assessing Officer in respect of the specific head of interest on the SDF loan, on which the penalty was deleted by the Tribunal. This omission in the case of the SDF loan stands in sharp contrast to those items where the Assessing Officer has specifically directed the initiation of penalty proceedings under section 271(1)(c). Consequently, and for this reason, we are of the view that the Tribunal was justified in deleting the penalty under section 271(1)(c) in respect of the SDF loan.

The appeal, therefore, will not raise any substantial question of law. It is, accordingly, dismissed.

There shall be no order as to costs.

Date:26.05.2014

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(Dr. D.Y. Chandrachud, C.J.)

(Dilip Gupta, J.)

¹ [2013] 358 ITR 593 (SC)