

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH 'A', CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

ITA No. 322/Chd/2015
(Assessment Year : 2008-09)

Pooja Industries,
Plot No.75, Sector 1,
Parwanoo, Distt. Solan.

Vs.

The Income Tax Officer,
Ward 1,
Solan.

PAN: AAGFP3843G
(Appellant)

(Respondent)

Appellant by : Shri Surinder Babbar

Respondent by : Shri R.K. Gupta, DR

Date of hearing : 25.05.2015

Date of Pronouncement : 05.06.2015

O R D E R

PER T.R. SOOD, A.M.:

In this appeal, the assessee raised following grounds of appeal :

- "1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in concurrence with the Ld. A.O. in upholding the penalty of Rs.34,03,835/- and the same is liable to be deleted.*
- 2. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in holding that the assessee had made incorrect claim of fact and not incorrect claim of law and tried to claim deduction for which it was not eligible in concurrence with the Ld.A.O. that the assessee has willfully and intentionally claimed wrong deduction u/s 80IC @ 100% on account of*

substantial expansion to its unit instead of eligibnle deduction u/s 80IB allowable @ 25%.”

2. After hearing both the parties, we find that the assessee was deriving income from running of flour mill manufacturing atta, maida and suji, etc. The assessee had claimed deduction under section 80IC of the Income Tax Act amounting to Rs.1,12,94,962/-. This deduction was denied because according the Assessing Officer, deduction under section 80IC of the Act was not allowable to flour mill because the same was mentioned in Schedule-XIII. The deduction was allowed under section 80IB(4) at 25%. The penalty proceedings under section 271(1)(c) of the Act were also initiated. In response to the show cause notice, it was submitted that the assessee has carried out substantial expansion and was under the bonafide belief that the assessee was entitled to deduction under section 80IC of the Act. However, the Assessing Officer did not accept the submissions of the assessee and levied penalty at the minimum rate of 100% under section 271(1)(c) of the Act amounting to Rs.34,03,835/-.

3. On appeal, the assessee mainly submitted that the claim of the assessee under section 80IC of the Act was rejected by holding that the assessee was running a flour mill, whereas the fact is that the assessee was running roller flour mill. Further the deduction was claimed on the basis of exemption order issued by the Government of Himachal Pradesh in respect of sales tax exemption in the case of roller

flour mills. In any case, the assessee has disclosed all the particulars. Therefore, it is not a case of concealment of particulars. The penalty should not have been levied and in this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd., 322 ITR 158. Reliance was also placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Himachal Agro Foods Limited, 9 DTR 46 for the proposition that merely a wrong claim of deduction under section 80IB of the Act would not lead to penal consequences. Further reliance was placed on the decision of the Hon'ble Supreme Court in the case of Cement Marketing Co. of India Ltd. Vs. ACIT of Sales Tax, 124 ITR 15. The learned CIT (Appeals) did not find force in the submissions of the assessee and confirmed the levy of penalty vide para 5.1, which is as under :

“5.1 The main issue in this case is whether imposition of penalty u/s 271(1) (c) is valid when assessee has tried to claim deduction under section 80IC treating its flour mill as roller flour mill and considering its business not in thirteenth schedule of Income Tax Act for the purpose of deduction u/s 80IC of the Act. In this case assessee is trying to manipulate the facts to evade the taxes by going into technicality of language and trying to distinguish its business from flour mill by stating that it is a "roller flour mill" and not a 'flour mill'. Thus the assessee has twisted facts to evade taxes by claiming wrong deduction u/s 80IC.

*Further, case laws relied upon by the assessee are not applicable to facts and circumstances of assessee's case. For example assessee placed reliance upon **CIT Vs Reliance Petro Products P Ltd. (2010) 322 ITR 158 (SC)** wherein Hon'ble Apex Court has held that incorrect claim of law does not attract penalty. Whereas in the present case assessee had made incorrect claim of fact and not of incorrect claim of law and tried to claim*

*deduction for which it was not eligible. Similarly, in case of CIT Vs Himachal Agro Foods Limited (2008) 9 DTR (P&H) 46, there was a bonafide mistake on the part of assessee wherein wrong year was taken for claim of deduction u/s 80IB of the Act. But in the present case there is no inadvertent mistake on the part of the assessee as the assessee has been contesting the issue of **distinction between flour mill and roller flour mill up to ITAT level**. Thus in view of forgoing discussion penalty imposed by the A. O. is confirmed and appeal of the assessee is **dismissed.**”*

4. Before us, the learned counsel for assessee reiterated the submissions made before the learned CIT (Appeals). It was further emphasized that the assessee was under bonafide claim that the assessee was eligible for deduction under section 80IC of the Act particularly in view of sales tax Exemption order for roller flour mills issued by the Joint Secretary (Industries) to the government of Himachal Pradesh, copy of which is placed at pages 10 and 11 of the Paper Book. He also relied upon the decisions which were cited before the learned CIT (Appeals). He further placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Larsen & Toubro Ltd., 366 ITR 502.

5. On the other hand, the learned D.R for the Revenue strongly supported the order of the learned CIT (Appeals).

6. We have considered the rival submissions carefully. We find that it is a case of mere denial of deduction which the assessee has claimed on roller flour mills with a bonafide plea that the same was also eligible for deduction after substantial expansion because the government of Himachal Pradesh had issued the order exempting the same from sales tax.. In our

opinion, this is a simple case of denial of deduction which was claimed under bonafide belief.

7. In any case, the assessee had made full disclosure regarding deduction and in fact, deduction has been allowed under section 80IB(4) at 25%. Therefore, it is not a case of concealment of particulars. The Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd. (supra) has made the following observations :

“A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word “particulars” used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.”

8. Further the Hon'ble Himachal Pradesh High Court in the case of CIT Vs. Himachal Agro Foods Limited (supra) held

that mere wrong claim of deduction under section 80IB of the Act which was claimed under bonafide belief would not lead to penal consequences. Similar observations have been made by the Hon'ble Bombay High Court in the case of CIT Vs. Larsen & Toubro Ltd. (supra). Therefore, in our opinion it is not a fit case for levy of penalty and accordingly we set aside the order of the learned CIT (Appeals) and deleted the penalty.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 5th day of June, 2015.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(T.R.SOOD)
ACCOUNTANT MEMBER

Dated : 5th June, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh