IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI CHANDRAMOHAN GARG, JUDICIAL MEMBER

ITA NO. 1948/DEL/2013
Assessment Year : 2003-04

Dy.Commissioner of income Tax, Central Circle-I, Faridabad.	vs	Crew Bos Products Pvt. Ltd., 624C, Jaina Tower-1, District Centre, Janakpuri, New Delhi-110058 (PAN: AAACC3222F)
(Appellant)		(Respondent)

Appellant by: Smt. Parwinder Kaur, Sr.DR
Respondent by : None

O R D E R

PER CHANDRAMOHAN GARG, JM

These appeals have been preferred by the Revenue against the order of the CIT(Central), Gurgaon dated 08.01.2013 in Appeal No. 1/3(LDH)/CIT(A) (C)/GGN/2011-12 for AY 2003-04.

2. The revenue has raised following grounds in this appeal:-

> *"(i) Whether on the facts and in the circumstances of the case, the ld. CIT(A) was justified in deleting the penalty of Rs.12,08,047/- imposed by the AO u/s 271(1)(c) of the Income Tax Act, 1961 by ignoring the fact that while deciding the quantum appeal, the addition made by the AO has been sustained by the ld. CIT(A)?*

(ii) Whether under the circumstances when the claim of the assessee u/s 80HHC was found to be not admissible, penalty u/s 271(1)(c) of the Act is leviable?"

3. Briefly stated, the facts giving rise to this appeal are that the original assessment was completed at a total income of Rs. 81,04,620/- vide order dated 30.11.2006 passed u/s 143(3) of the Income Tax Act, 1961 (for short the Act). Subsequently, the above assessment order was set aside by the CIT, Delhi-I, New Delhi u/s 263 of the Act dated 27.03.2008 by observing that the order passed by the AO was erroneous and prejudicial to the interest of revenue as the assessee has claimed excessive deduction u/s 80HHC of the Act and set aside the order of the AO with the direction to frame a fresh assessment order in accordance with law after giving proper opportunity of hearing for the assessee. During the reassessment proceedings in pursuance to order u/s 263 of the Act, the assessee was asked to explain as to why in reference to section 80HHC of the Act, the total income of the business including both in relation to export oriented unit as also the other exports be not taken for computation of deduction u/s 80HHC of the Act. After considering the assessee's submissions, the AO did not find any force in it and held that the Act is quite explicit on the issue and the AO made recomputation of deduction according to which the assessee was found entitled to claim deduction u/s 80HHC of the Act to the tune of

Rs.25,13,742/- as against the deduction of Rs. 58,00,945 as claimed by the assessee in its return of income filed with the department.

4. Subsequently, the AO initiated penalty proceeding u/s 271(1)(c) of the Act and held that the assessee has concealed particulars of its taxable income and has furnished inaccurate particulars of its income by way of claiming excess deduction u/s 80HHC of the Act as discussed above. Finally, the AO passed penalty order dated 28.3.2011 and imposed penalty of Rs.12,08,047. The aggrieved assessee preferred an appeal before the CIT(Central), Gurgaon which was allowed by deleting the penalty. Now, the aggrieved revenue is before this Tribunal in the second appeal with the grounds as reproduced hereinabove.

5. When the case was called for hearing, neither the assessee nor his representative appeared and there is no application for adjournment before us. On careful perusal of the relevant material placed on record as well as penalty and impugned order, we observe that the appeal may be disposed of after hearing the ld. DR and we proceed to decide the appeal in absence of assessee and his representative.

6. We have heard arguments of ld. DR and carefully perused the relevant material placed on record, inter alia assessment order, penalty order and impugned order by which the CIT(Central), Gurgaon cancelled and deleted

the penalty. Ld. DR submitted that the CIT was not justified in deleting the penalty imposed by the AO by ignoring the fact that while deciding the quantum appeal, the addition made by the AO has been sustained by the CIT and therefore the AO rightly held that the assessee furnished inaccurate particulars of its income and also concealed the particulars of taxable income and the AO rightly imposed penalty u/s 271(1)(c) of the Act. The DR vehemently contended that the CIT deleted the penalty without any sound, cogent or justified reasoning. The DR finally prayed that the impugned order may be set aside by restoring that of the penalty order.

7. From bare reading of impugned order, we observe that the CIT, Gurgaon deleted the penalty by following the decision of **Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd. 322 ITR 158(SC)** wherein their lordships interpreted the intendment of the legislature and provisions of section 271(1)(c) of the Act. The relevant para 10 of this order reads as under:-

> *"10. It was tried to be suggested that s. 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form part of the total income. It was, therefore, reiterated before us that the AD had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income; it was tried to be*

argued that the falsehood in accounts can take either of the two forms; (i) a 17 item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under s 271 (l) (c). If we accept the contention of the revenue then in the case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under s. 271 (1) (c). That is clearly not the intendment of the legislature."

8. We further observe that the CIT has also relied on the decision of **Hon'ble Supreme Court in the case of M/s Hindustan Steel Ltd. vs State of Orissa (1972) 83 ITR 26(SC)** and decision of **Hon'ble High Court of Delhi in Escorts Finance Ltd. (2009) 226 CTR (Del) 105** wherein it was held that where facts are clearly disclosed in the return, penalty cannot be levied merely because an amount is not allowed or taxed as income. Turning to the facts and circumstances of the present case, admittedly, the assessee made claim of deduction u/s 80HHC of the Act which was reduced during the reassessment proceedings finalized u/s 263/143(3) of the Act and

a substantial part of the claim of the assessee for deduction u/s 80HHC of the Act was reduced and the AO held that the assessee was entitled to claim deduction u/s 80HHC of the Act of Rs.25,13,742 or against the deduction of Rs.58,00,945 as claimed by the assessee in its return of income. In this factual matrix, while the AO passed an order of reassessment in pursuance to order of CIT u/s 263 of the Act and on recomputation of deduction, the AO allowed the claim of the assessee for deduction u/s 80HHC Act at a lower figure but even in this situation, it cannot be inferred that the assessee has concealed its particulars of income or has furnished inaccurate particulars of its income. Thus, we come to a conclusion that the CIT was right in following decision of Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd. (supra) and the CIT deleted the penalty on just and cogent reason because penalty cannot be levied merely because the assessee's claim was not accepted or was not acceptable to the revenue, that by itself would not attract the penalty u/s 271(1)(c) of the Act. Accordingly, we are unable to see any ambiguity, perversity or any other valid reason to interfere with the impugned order and appeal of the revenue being devoid of merits is dismissed.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 8.8.2014.

Sd/-	Sd/-
(G.D. AGRAWAL)	(CHANDRAMOHAN GARG)
VICE PRESIDENT	JUDICIAL MEMBER

DT. 8th AUGUST 2014
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. C.I.T.(A)
4. C.I.T. 5. DR

By Order

Asstt.Registrar