

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 450 of 2009 (O&M)

DATE OF DECISION: 20.8.2009

Commissioner of Income Tax, FaridabadAppellant

Versus

M/s SSP Ltd., 19, DLF Industrial Area-II,Respondent
Faridabad

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. Rajesh Katoch, Advocate
for the appellant.

ADARSH KUMAR GOEL, J. (Oral)

1. The revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (for short, "the Act") against the order of Income Tax Appellate Tribunal, Delhi Bench 'G' New Delhi dated 27.01.2009 passed in ITA No. 2210/Del./2008 for the assessment year 2001-02, proposing to raise following substantial questions of law:-

1. "Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld. CIT(A) in deleting the penalty of Rs. 8,00,000/- levied by the Assessing Officer u/s 271(1) (c) of the Income Tax Act, 1961 in respect of additions in assessee's income which were confirmed by the Ld. ITAT vide its order dated 30.3.2007 in ITA No. 2090/Del.2005?"

2. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld. CIT(A) in deleting the penalty of Rs. 8,00,000/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 even though the assessee furnished inaccurate particulars of income and by doing so the assessee company reduced its tax liability?
3. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld. CIT(A) in deleting the penalty of Rs.8,00,000/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 even though the penalty is leviable on contravention of the provisions of a civil statute like Income Tax Act and, it is settled law that breach of a civil obligation attracts levy of penalty whether the contravention was made by the defaulter with any guilty intention or not.
4. Without prejudice to the above, whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld. CIT (A) in deleting the portion of penalty levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 on the addition of Rs.17,94,761/- while observing in para 4 of its order that the expenditure on the PF and ESI is allowable, in contravention of the judgment of Hon'ble Bombay High in the case of CIT Vs. Pamwi Tissues Ltd. (215 CTR 150), wherein the case of CIT Vs. Vinay Cement Ltd. was distinguished

and it was held that the payment of PF and ESI should be made by the 'due date' and there could be no legal dispute on this issue?"

2. During the assessment, the Assessing Officer made additions on account of disallowance and also levied penalty on that ground. The CIT(A) deleted the penalty holding that mere disallowance was not a ground for levying penalty in absence of any concealment or giving of inaccurate particulars. This view has been upheld by the Tribunal by observing as under:-

"We have considered the rival submissions. A perusal of the penalty order clearly shows that the penalty has been levied on account of two additions. The first one being the disallowance of certain expenses under the head office expenditure and second on the disallowance of the PF and ESI payments made beyond the due date under the respective Acts. In regard to the disallowance of expenditure, it is noticed that in the assessment order the assessee has specifically explained that the expenses are business expenditure and they have been incurred as fooding expenses to entertain the clients and business related persons and the original bills of expenditure could also be verified. It is further noticed that this expenditure had been disallowed on an estimate basis without pointing out any specific defect in the explanation of the assessee. Obviously, on an estimate, disallowance of an expenditure, no penalty is leviable. In regard to the PF and ESI payments which have been disallowed it is noticed that in all cases, the payments have been made before the due date of filing

the return. The decision of the Hon'ble jurisdictional High Court in the case referred to upon by the Ld. AR in the case of PM Electronics Ltd. (supra) would be squarely applicable and the payment is allowance expenditure though the same has not been allowed in the quantum appeal. In view of the decision of the Hon'ble jurisdictional High Court, one it is found that the expenditure on the PF & ESI is allowable, just because the disallowance has been confirmed on a mistaken interpretation, it would not lead to the reason for the confirmation of levy of penalty. In the circumstances, on this ground also, no penalty is leviable in the hands of the assessee. This being so, we are of the view that the finding of the CIT(A) in cancelling the penalty on the two count is on a fight footing and does not call for any interference.”

3. We have heard learned counsel for the appellant.
4. A concurrent finding has been recorded on facts that there was valid explanation that the assessee had raised debatable issue for claiming the expenditure and disallowance is no ground for levying penalty. Mere erroneous claim in absence of any concealment or giving of inaccurate particulars is no ground for levying penalty.
5. Learned counsel for the revenue submitted that there was no confusion with regard to payment of employees' contribution and the said contribution was also delayed. Assuming the assessee was not justified in delaying the deposit and was liable to pay tax on the said amount, this could not be conclusive to infer deliberateness of default on the part of the assessee. Issue of levy of penalty has to be decided on facts of each case.

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6. In view of above, no substantial question of law arises. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

August 20, 2009
pooja

(DAYA CHAUDHARY)
JUDGE

Note:-Whether this case is to be referred to the ReporterYes/No