

IN THE HIGH COURT OF ALLAHABAD

LUCKNOW BENCH

Income Tax Appeal No. 18 of 2007

COMMISSIONER OF INCOME TAX-I

Vs

M/s U P STATE BRIDGE CORPORATION LTD

V K Shukla And Rajiv Sharma JJ.,

Dated: October 7, 2009

Appellant rep by: D.D.Chopra

Respondent rep by: R.A. Shankhdhar

JUDGEMENT

In nutshell, the case of the appellant is that the respondent is a State Public Sector Undertaking engaged in the business of civil construction work in India and abroad. The respondent filed return on 26.12.1989 showing loss of Rs.4,11,01,692/- which was subsequently revised on 9.12.1991 with a loss of Rs.3,60,70,958/-. The original assessment made under Section 144 on 25.3.1994 was set aside by the CIT (A) vide his order dated 9.9.1994 and the fresh assessment was completed on 27.3.1997 on an income of Rs.3,99,45,400/- against which the respondent went in appeal, which was set aside by the CIT-I vide his order dated 28.3.2003. Thereafter, the Assessing Officer made fresh assessment on 12.12.2003 determining the total income of Rs.2,33,23,966/- and also issued penalty notice under Section 271 (1) (C). The first appeal was allowed and the penalty imposed upon the respondent was deleted. Being aggrieved, the Incometax department filed an appeal before the Income-tax Appellate Tribunal, which was dismissed. Feeling aggrieved, the instant appeal has been filed raising the following substantial questions of law:-

(1) Whether under the facts and circumstances of the case the learned Income Tax Appellate Tribunal was right in law in deleting the penalty imposed u/S 271 (1) (c) of the Income Tax Act, 1961 by holding that the imposition of penalty against the addition on the account of Exchange Variation Reserve was not eligible as the issue, as such, was 'debatable' one.

(2) Whether under the facts and circumstances of the case the learned Income Tax Appellate Tribunal was justified in holding the said issue as debatable especially when there was no ambiguity in law on the subject and also when the addition was made by the A.O. Only on the basis of the directions of the learned Income Tax Appellate Tribunal itself, for the A.Y. 1982- 83.

(3) Whether under the facts and circumstances of the case the learned Income Tax Appellate Tribunal was justified in law in deciding the said penalty u/s 271 (1)(c) by holding the addition as 'debatable', before deciding the said issue, involved in

quantum appeal which itself was pending before the learned Income Tax Appellate Tribunal?

In the case of CIT v. Harshvardhan Chemicals & Minerals Ltd. [259 ITR 212] the Rajasthan High Court has held that affirming the decision of the Appellate Tribunal that no penalty was leviable in view of the finding of the Tribunal that when the assessee has claimed deduction of an amount that was debatable it could not be said that the assessee had concealed any income or furnished inaccurate particulars for evasion of tax, and, in view of the findings of the Tribunal, no case was made out for interference.

While perusing the order of the Commissioner of Incometax, it reveals that penalty has been levied on the basis of the additions which are made either due to difference of opinion or merely on presumptions or of routine nature. Before imposing penalty for concealment of income, the Assessing Officer should bring concrete evidence or material on record for his satisfaction that income has been concealed or inaccurate particulars thereof have been furnished. Mere initiation of proceedings under Section 271(1)(c) cannot be assumed that such a satisfaction was arrived at by the Assessing Officer. Accordingly, the appeal was allowed and the penalty deleted being not sustainable.

We are of the considered opinion that the Assessing Officer should assign the reasons while imposing penalty. In not doing so, the order is erred in law. The Commissioner has rightly allowed the appeal and thereafter, the appeal filed by the department has also been dismissed rightly. Further, our view is strengthened by the decision of CIT v. Harshvardhan Chemicals & Minerals Ltd. (supra).

Keeping all these aspects of the matter in view, the appeal filed by the Commissioner of Income-tax is dismissed.