

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

I.T.A. No.474 of 2010  
Date of decision: 1.11.2010

**Commissioner of Income Tax.**

-----Appellant.

Vs.

**M/s Bata Steels Pvt. Ltd.**

-----Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

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

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**ADARSH KUMAR GOEL, J.**

1. This appeal has been preferred by the revenue under Section 260-A of the Income Tax Act, 1961 (for short, "the Act") against the order dated 9.9.2009 of the Income Tax Appellate Tribunal, Chandigarh in I.T.A. No.465/CHANDI/2009 for the assessment year 2005-06 proposing to raise following substantial questions of law:-

“Whether on the facts and circumstances of the case, the Hon’ble ITAT is justified in law in deleting the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961 amounting to Rs.5,79,673/- ignoring the fact that the assessee had furnished inaccurate particulars of its income and had failed to substantiate its claim of bad debts written off.?”

2. The Assessing Officer made addition to the declared income of the assessee by not accepting the entry of writing off of

bad debts. It was observed that the assessee could not furnish justification for writing off the bad debts. Apart from the addition on that account, the penalty was also imposed. On appeal, the penalty was set aside with the observations that writing off of bad debt was not to evade tax. Full particulars of the bad debts were disclosed by the assessee. The said finding has been affirmed by the Tribunal. It was observed:-

“9..... It is a case where a claim made by the assessee has been rejected and we may further say that the claim made by the assessee cannot be termed as patently erroneous or in complete ignorance of the relevant provisions of law. The assessee had made a claim in terms of Section 36(1) (vii) and this Section, as understood by the Special Bench of the Tribunal in the case of Oman International Bank (supra), provides that in order to claim deduction, it would be sufficient if assessee chooses to write off the debt as irrecoverable in the book of account. It is further observed by the Special Bench that the requirement of proving the debt having become bad to the hilt, has been done away by the amended provisions of Section 36(1)(vii) w.e.f. 01.04.1989. Notably, the said decision of the Tribunal stands affirmed by the Hon'ble Bombay High Court in the case reported at 223 CTR 382 (Bom). Therefore, testing the claim of the assessee on the anvil of such position of law, in so far as it is relevant for our present purpose, it is safe to deduce that the claim of the assessee cannot be said to be patently erroneous in the eyes of law. In fact, no falsity in claim of the assessee has been found even during the

assessment proceedings. The disallowance is based on a mere view adopted by the Assessing Officer. The claim made in the return cannot be said to be bereft of bonafides. Considering the entire facts and circumstances of the case, we find ample force in the conclusion drawn by the CIT(Appeals) that the Assessing Officer was not justified in imposing penalty u/s 271(1)(c) of the Act.”

3. We have heard learned counsel for the revenue.

4. It is not disputed that in view of judgment of the Hon'ble Supreme Court in **T.R.F. Ltd. v. CIT** [2010] 323 ITR 397, it is not necessary for the assessee to establish that the debt had already become irrecoverable. If the assessee takes a bonafide decision that it was necessary to write off the bad debts, the writing off may be justified. In any case, for levy of penalty, it has to be shown that the assessee had made concealment or had given wrong information to evade tax.

5. In view of concurrent finding of the CIT(A) and the Tribunal that there was no intention to evade tax, we are unable to hold that any substantial question of law arises.

6. The appeal is dismissed.

**(ADARSH KUMAR GOEL)**  
**JUDGE**

**November 01, 2010**  
**ashwani**

**(RAKESH KUMAR JAIN)**  
**JUDGE**