

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

**I.T.A. No.38 of 2010
Date of Decision:26.02.2013**

The Commissioner of Income Tax, Faridabad

.....Appellant

Vs.

M/s Amtek Auto Ltd.

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI**

Present:- Mr. Tajinder K. Joshi, Advocate for the appellant.

Mr. Rakesh Gupta and Mr. S.K. Mukhi, Advocates,
for the respondent.

HEMANT GUPTA, J.(Oral)

The revenue is in appeal under Section 260-A of the Income Tax Act, 1961 arising out of an order passed by Income Tax Appellate Tribunal, Delhi Bench 'A', New Delhi (for short "the Tribunal") on 31.3.2009 arising out of an assessment year 2001-02 whereby the penalty proceedings initiated against the assessee under Section 271(1)(c) of the Income Tax Act, 1961 were set aside.

The Assessing Officer levied penalty under Section 271(1)(c) in respect of additions made on account of loss on the sale of fixed asset, loss on sale of shares and expenses paid towards placement of preference shares. The Tribunal while accepting the appeal found that such additions made by the Assessing Officer are based upon difference of opinion whether such additions are to be treated as revenue expenditure or a capital expenditure

and not because the assessee has made a false claim. It was also found that even after the additions are made, there is no change in the amount of tax payable by the assessee as the ultimate return of the assessee remains less than the amount assessable under Section 115JB of the Act.

The Revenue has claimed the following substantial questions of law:-

- (i) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in deleting the penalty of Rs.11,18,881/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 and confirmed by the Ld. CIT (A) even though the conditions laid down under the provisions of section 271(1)(c) are satisfied in assessee's case?"
- (ii) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in deleting the penalty of Rs.11,18,881/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 disregarding the fact that even if the assessee has paid higher taxes under the provisions of section 115JB of the Act, 1961, it is allowed to carry forward and set off the tax credit in subsequent year in accordance with the provisions of section 115JAA of the Income Tax Act, 1961?
- (iii) Whether, the Ld. ITAT was justified in deleting the penalty of Rs.11,18,881/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 in the light of the apex Court's decision in the case of Union of India & others V/s. Dharmendra Textile Processors & others 306 ITR 277 (SC) wherein it is held that the object behind the enactment of section 271(1)(c) read with the explanation indicates that the section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability and willful concealment is not an essential ingredient for attracting civil liability?

After hearing learned counsel for the parties, we do not find that any substantial question of law arises for consideration.

The assessee has disclosed the nature of transactions in its return. It was on the basis of interpretation of the provisions of the Statute, the Assessing Officer found that such expenditure claimed by the assessee is not the revenue expenditure but the capital expenses. There is fine distinction as to when an expenditure can be treated as a revenue or a capital expenditure. Therefore, merely for the reason that the assessee has claimed the expenditure to be revenue will not render the assessee liable to penalty proceedings. The order passed by the Tribunal does not give rise to the questions of law sought by the revenue.

Consequently, we do not find any merit in the present appeal and the same is dismissed.

**(HEMANT GUPTA)
JUDGE**

February 26, 2013
renu/Vimal

**(RITU BAHRI)
JUDGE**