

TAXAP/560/2009 6/10 ORDER

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**TAX APPEAL No. 560 of 2009**

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**COMMISSIONER OF INCOME TAX-I - Appellant(s)**

**Versus**

**BACKBONE ENTERPRISES - Opponent(s)**

===== **Appearance :**  
MRS MAUNA M BHATT for Appellant(s) : 1,  
None for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**  
**and**  
**HONOURABLE MS.JUSTICE H.N.DEVANI**

**Date : 04/05/2010**

**ORAL ORDER**

**(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)**

1. In this appeal under section 260A of the Income Tax Act, 1961 (the Act), appellant revenue has proposed the following three questions:

*(1) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in upholding the order of the Ld. CIT (A) who had deleted the penalty levied u/s. 271(1)(c) by accepting the fact that the wrong claim of deduction u/s. 80IA was a bonafide error?*

*(2) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in deleting the penalty by holding that where the return filed includes furnishing of inaccurate particulars of income, and upon cognizance taken by the department, the assessee filed revised return admitting the default, the same can be termed as circumstances leading to bonafide mistake or omission, thereby, over looking the decision of the Hon'ble Supreme Court in the case of Dharmendra Textile Process & Others reported in 306 ITR 277 (SC), wherein it is held that wilful concealment is not an essential ingredient for attracting civil liability?*

*(3) Whether the Appellate Tribunal is right in law in not considering various judicial pronouncements holding that filing of revised return after concealment is detected by the department will not absolve the assessee from liability to penalty for concealment. P.C. Joseph & Bros. vs. CIT 2001-108 Taxman 253 (Ker.), CIT vs. Glamour Restaurant [2003] 80 TTJ (Mum) 763, ManMohan Gupta Vs. CIT [2004] 189 CTR 331 (Raj.), CIT Vs. J K A Subramania Chettiar [1977] 110 ITR 602 (Mad), Deepak Construction Co. Vs. CIT [2007] 293 ITR 285 (Guj).*

2. The respondent assessee filed its return of income on 24.10.2001 claiming deduction under section 80IA of the Act. The Assessing Officer noticed that the assessee was a firm and that under the provisions of the Act, only companies registered in India were entitled to deduction under section 80IA. He, therefore, issued notice under section 154 of the Act on 14.03.2002 calling upon the assessee to show cause as to why deduction claimed under section 80IA should not be disallowed. In reply to the said notice, the assessee vide letter dated 18.03.2002 informed the Assessing Officer that it had already filed a revised return of income under section 139(5) on 15.3.2002 wherein no claim under section 80IA had been made. The Assessing Officer did not consider the assessee's claim under the revised return and framed assessment determining total income at Rs. 69,74,621/- as against the returned income of Rs.18,96,110/-. In penalty proceedings, the Assessing Officer observed that the claim for deduction under section 80IA was prima facie a wrong claim and that the said wrong claim was brought to the notice of the assessee by the Assessing Officer vide notice dated 14.03.2002 under section 154; and that it was in response to the said notice that the assessee had filed revised return of income withdrawing the claim under section 80IA. According to the Assessing Officer since the assessee had made a wrong claim under section 80IA of the Act, it could not escape from penalty proceedings under section 271(1)(c) of the Act for concealment of income and furnishing inaccurate particulars of its income by filing

revised return. He accordingly imposed penalty on the total concealed income of Rs.66,33,439 at a minimum @ 100% of the tax sought to be evaded which came to Rs.25,21,908/-.

3. The assessee carried the matter in Appeal before Commissioner (Appeals), who set aside the penalty. Revenue carried the matter in appeal before the Tribunal which came to be dismissed.

4. Assailing the impugned order of the Tribunal, the learned Senior Standing Counsel for the appellant-revenue submitted that it was only after the Assessing Officer had brought it to the notice of the assessee that it was not entitled to claim deduction under section 80IA of the Act, that the assessee had filed revised return withdrawing the claim. That while filing return of income, the assessee had concealed its income and furnished inaccurate particulars and as such became liable to penalty under section 271(1)(c). That merely because it had filed a revised return withdrawing the claim after the Assessing Officer brought the same to its notice, it cannot be said that the assessee had not concealed its income and furnished inaccurate particulars.

5. A perusal of the order of Commissioner (Appeals) indicates that after filing of the return of income by respondent-assessee claiming deduction under section 80IA of the

Act, the Assessing Officer had issued notice dated 14.03.2002 under section 154 of the Act in relation to A.Y. 2000-2001. Immediately on the next day the assessee filed revised income for the year under consideration, that is, A.Y. 2001-2002 withdrawing the claim under section 80IA. Commissioner (Appeals) further found that the Assessing Officer subsequently issued another notice under section 154 of the Act on 18.3.2002 in relation to A.Y.2001-2002, hence there was no valid notice under section 154 in relation to the year under consideration till 18.3.2002. It was further observed that there is no evidence of any investigation or detection of concealment of income by the Assessing Officer as alleged in the impugned penalty order; that the assessee had long been assessed under the status of firm and had never made any such claim under section 80IA and that it was only in the assessment year under consideration that the assessee made such a claim. From the facts emerging on record, Commissioner (Appeals) was of the view that the assessee was served with a valid notice under section 154 only on 18.03.2002. However, the assessee had already filed a revised return on 15.3.2002. He, accordingly, held that the assessee had withdrawn its claim under section 80IA on its own motion on 15.03.2002 by filing revised return under section 139(5). Commissioner (Appeals) was of the view that the assessee was under a bonafide belief that deduction under section 80IA was available to it in the status of firm; that after it realized that this claim had been inadvertently made in the return, it filed revised return on 15.03.2002. According to Commissioner (Appeals) the facts of the case seen as a whole indicate that the claim in the original return was made under a bonafide belief and that since default

had been committed under a bonafide belief, which was rectified by filing a revised return, the assessee was not liable to punishment under section 271(1)(c) and accordingly set aside the penalty.

6. As can be seen from the impugned order of the Tribunal, the Tribunal has found that as a matter of fact that the assessee had made a bonafide claim which was later on withdrawn by filing a revised return. Considering the decision of the Madras High Court in the case of CIT v. J. K. A. Subramania Chettiar, 110 ITR 602 (Mad) on which reliance was placed on behalf of the revenue, the Tribunal was of the view that if after having originally filed the return of income, if an assessee subsequently files a fresh return voluntarily before the department has made any investigation or detected concealment of income, even then he cannot escape from the consequence of his having concealed the income in the original return and will be liable to penalty; if on the other hand, the defect in the original return was merely an inadvertent omission or unintended wrong statement, the assessee would certainly have a right to have the same corrected by filing a revised return. In the facts of the present case, the Tribunal found that the assessee had claimed deduction under section 80IA under the bonafide belief that it was entitled to deduction under section 80IA of the Act. Thereafter, the assessee had withdrawn the same vide its revised return. According to the Tribunal, when the assessee had committed the default under a bonafide belief which was rectified by filing

a revised return, it could not be held liable for penalty under section 271(1)(c) of the Act and accordingly confirmed the order of Commissioner (Appeals).

7. In the light of the concurrent findings recorded by Commissioner (Appeals) as well as the Tribunal, it is apparent that the assessee had bonafide made a claim for deduction under section 80IA of the Act, which came to be rectified by filing a revised return withdrawing the claim and that as such there was no concealment or furnishing of inaccurate particulars of income on the part of the assessee. Moreover, the notice under section 154 of the Act issued by the Assessing Officer also does not remotely indicate anything to that effect. In the circumstances, Commissioner (Appeals) was justified in setting aside the penalty imposed under section 271(1) (c) of the Act.

8. In the background of the aforesaid facts, it is not possible to state that the impugned order of the Tribunal suffers from any legal infirmity so as to warrant interference.

9. In absence of any substantial question of law, as proposed or otherwise, the appeal is dismissed.

Sd/- Sd/-

(D.A. Mehta, J. ) (H.N. Devani, J.)

M.M.BHATT

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