Supreme Court of India C.I.T.,Ahmedabad vs Reliance Petroproducts Pvt.Ltd on 17 March, 2010 Author: V Sirpurkar Bench: V.S. Sirpurkar, Mukundakam Sharma "REPORTABLE"

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL No. 2463___OF 2010
(Arising out of SLP (C) No.27161 of 2008)

C.I.T., Ahmedabad .... Appellant

Versus

Reliance Petroproducts Pvt. Ltd. .... Respondent

JUDGMENT

V.S. SIRPURKAR, J. 1. Leave granted. 2. The only question in this appeal which has been filed by the Commissioner of Income Tax-III is as to whether the respondent-assessee is liable to pay the penalty amounting to Rs.11,37,949/- under Section 271(1)(c) of the Income Tax Act (hereinafter referred to as "the Act") ordered by the Assessing Authority. The Commissioner of Income Tax (Appeals), however, deleted the said penalty. The order of the Commissioner (Appeals) was appealed against before the Income Tax Appellate Tribunal (hereinafter referred to "the Tribunal") which confirmed the order of the Commissioner (Appeals) and dismissed the appeal filed by the Revenue. However, the Revenue challenged the said order before the High Court which confirmed the orders passed by the Commissioner (Appeals) and the Tribunal while dismissing the Tax Appeal filed by the Revenue. 3. Few facts would be relevant. 4. The assessee is a company and the relevant Assessment Year is 2001-02. The Return was filed on 31.1.2001 declaring loss of Rs.26,54,554/-. This assessment was finalized under Section 143(3) of the Act on 25.11.2003 whereby the total income was determined at Rs.2,22,688/-. In this assessment the addition in respect of interest expenditure was made. Simultaneously penalty proceedings under Section 271(1)(c) of the Act were also initiated on account of concealment of income/furnishing of inaccurate particulars of income. The said expenditure was claimed by the assessee on the basis of expenditure made for paying the interest on the loans incurred by it by which amount the assessee purchased some IPL shares by way of its business policies. However, admittedly, the assessee did not earn any income by way of dividend from those shares. The company in its Return claimed disallowance of the amount of expenditure for Rs.28,77,242/- under Section 14A of the Act. 5. By way of response to the Show Cause Notice

regarding the penalty in its reply dated 22.3.2006, the assessee claimed that all the details given in the Return were correct, there was no concealment of income, nor were any inaccurate particulars of such income furnished. It was pointed out that the disallowance made by the Assessing Authority in the Assessment Order under Section 143(3) of the Act were solely on account of different views taken on the same set of facts and, therefore, they could, at the most, be termed as difference of opinion but nothing to do with the concealment of income or furnishing of inaccurate particulars of such income. It was claimed that mere disallowance of the claim in the assessment proceedings could not be the sole basis for levying penalty under Section 271(1)(c) of the Act. It was submitted specifically that it was an investment company and in its own case for Assessment Year 2000-01 the Commissioner (Appeals) had deleted the disallowance of interest made by the Assessment Officer and the Tribunal has also confirmed the stand of the Commissioner (Appeals) for that year and, therefore, it was on the basis of this that the expenditure was claimed. It was further submitted that making a claim which is rejected would not make the assessee company liable under Section 271(1)(c) of the Act. It was again reiterated that there was absolutely no concealment, nor were any inaccurate particular ever submitted by the assessee-company. 6. Shri Bhattacharya, Learned ASG submits that Commissioner (Appeals), the Tribunal as well as the High Court have ignored the positive language of Section 271(1)(c) of the Act. He pointed out that the claim of the interest expenditure was totally without legal basis and was made with the malafide intentions. It was further pointed out that the claim made for the interest expenditure was not accepted by the Assessing Authority nor by the Commissioner (Appeals) and, therefore, it was obvious that the claim for the interest expenditure did not have any basis. He further pointed out that the contention about the earlier claims being finalized was also not correct as the appeal was pending before the High Court against the order of the Tribunal for the year 2000-01. According to the Learned ASG, even otherwise, the expenditure on interest could not have been claimed in law, as under Section 36(1)(iii), only the amount of interest paid in respect of capital borrowed for the purposes of the business or profession could have been claimed and it was clear that the interest in the present case was not in respect of the capital borrowed. Our attention was also invited to Section 14A of the Act, which provides that no deduction could be allowed in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. The Learned ASG also invited our attention to provision of Section 10(33) to show that the income arising from the transfer of a capital asset could not be reckoned as an income which can form the part of the total income. In short, the contention was that the assessee in this case had made a claim which was totally unacceptable in law and thereby had invited the provisions of Section 271(1)(c) of the Act and had, therefore, exposed itself to the penalty under that provision. 7. As against this, Learned Counsel appearing on behalf of the respondent pointed out that the language of Section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the

assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under:- "271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person- (c) has concealed the particulars of his income or furnished inaccurate particulars of such income." A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs.Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and reiterated in para 13 that:- "13. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist." 8. Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. [2007(6) SCC 329], this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf

of the assessee. It went on to hold that Clause (iii) of Section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. was upset. In Union of India Vs. Dharamendra Textile Processors (cited supra), after quoting from Section 271 extensively and also considering Section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of Section 271(1)(c) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276-C of the Act. The basic reason why decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled by this Court in Union of India Vs. Dharamendra Textile Processors (cited supra), was that according to this Court the effect and difference between Section 271(1)(c) and Section 276-C of the Act was lost sight of in case of Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra). However, it must be pointed out that in Union of India Vs. Dharamendra Textile Processors (cited supra), no fault was found with the reasoning in the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra), where the Court explained the meaning of the terms "conceal" and inaccurate". It was only the ultimate inference in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled. 9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word"inaccurate" has been defined as:- "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript". We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must

mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars. 10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature. 11. In this behalf the observations of this Court made in Sree Krishna Electricals v. State of Tamil Nadu & Anr. [(2009) 23VST 249 (SC)] as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the Return. However, the said transactions were reflected in the accounts of the assessee. This Court, therefore, observed: "So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside." The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its Return. 12. The Tribunal, as well as, the Commissioner of Income Tax (Appeals) and the High Court have correctly reached

this conclusion and, therefore, the appeal filed by the Revenue has no merits and is dismissed. .....J. (V.S. Sirpurkar) .....J. (Dr. Mukundakam Sharma) New Delhi; March 17, 2010. Digital Performa

Case No. : Civil Appeal No..... of 2010 (Arising out of SLP(C) No. 27161 of 2008)

Date of Decision : 17.03.2010

Cause Title : C.I.T., Ahmedabad

Versus

Reliance Petroproducts Pvt. Ltd.

Coram : Hon'ble Mr. Justice V.S. Sirpurkar Hon'ble Dr. Justice Mukundakam Sharma

C.A.V. On : 09.02.2010

Judgment delivered by : Hon'ble Mr. Justice V.S. Sirpurkar

Nature of Order : Reportable