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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1332 OF 2011

The Commissioner of Income Tax-I, Mumbai

..Appellant.

V/s.

Somany Evergree Knits Ltd.

..Respondent.

Mr. Vimal Gupta, Senior Advocate with Ms. Padma Divakar for the appellant.

Mr. Nikhil Rajani i/b. V. Deshpande & Co. for the respondent.

CORAM : J.P. DEVADHAR AND
M.S. SANKLECHA, JJ.

DATED : 21ST MARCH, 2013

P.C. :-

1. In this appeal by the revenue for the assessment year 2003-04, following questions of law have been raised for our consideration :-

- A. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied by the assessing officer u/s.271(1)(c) of the Income Tax Act even though the assessee had accepted in assessment proceedings that it had filed inaccurate particulars of income by claiming excess depreciation amounting to Rs.32,51,161/- in its return of income ?
- B. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied by the assessing officer u/s.271(1)(c) of the Income Tax Act even

though the assessee had accepted in assessment proceedings that it had filed inaccurate particulars of income by wrongly claiming loss on sale of garment unit amounting to Rs.21,68,597/- as a revenue deduction in its return of income ?

2. Regarding question A:

(i) The respondent-assessee had in its return of income claimed depreciation at Rs.1.70 crores. During the assessment proceedings, the respondent-assessee realised that it had wrongly claimed Rs.1.70 crores of depreciation instead of Rs.1.05 crores. This excess claim for depreciation had happened due to a mistake in calculation i.e. Instead of reducing the amount the amount of Rs.32.51 lakhs from Rs.1.38 crores, the amount of Rs.32.51 lakhs was added to Rs.1.38 lakhs resulting in claim for depreciation at Rs.1.70 crores. The Assessing Officer did not accept that it was a mistake and levied penalty under Section 271(1)(c) of the Income Tax Act, 1961 (the Act).

(ii) The CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal held that excess depreciation originally claimed was on account of bonafide and inadvertent mistake on the part of the respondent-assessee. In any case, during the course of the assessment proceedings, the assessee realised its mistake and pointed out the same. The Tribunal held that mistake should not be

visited with penalty.

(iii) The grievance of the revenue is that the mistake ought to have been rectified by filing a revised return of income. The Tribunal held that the time to file a revised return had expired. In any event, it is not disputed that it was a bonafide mistake on the part of the respondent-assessee. In that view of the matter, imposition of penalty was not warranted.

(iv) Since the order of the Tribunal on the above issue is based on a finding of fact, we see no reason to entertain question A.

3. Regarding question B:

(i) The respondent-assessee had during the assessment year sold its garment manufacturing machine and claimed a loss of Rs.21.68 lakhs thereon as a revenue expenditure in its return of income. In the course of the assessment proceedings, the respondent -assessee realised its mistake and withdrew the above loss shown as revenue expenditure in its profit and loss account and in the consequent return of income. The Assessing Officer accepted the above withdrawal and completed the assessment. However, he

imposed penalty under Section 271(1)(c) of the Act.

(ii) In appeal, the CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal by the impugned order records a finding that in the profit and loss account filed along with the return of income, the respondent-assessee has clearly described the loss as the loss on sale of its garment unit assets. This loss was added to the net loss in the computation of the total income. Thus, there was complete disclosure. The Tribunal further records that the above loss was claimed by the respondent-assessee as a revenue expenditure as the Chartered Accountant did not advise them correctly as to the legal position. However, during the assessment proceedings, the mistake was noticed and corrected by the respondent-assessee. On the above facts, the Tribunal concluded the claim for deduction made by the respondent-assessee was on account of a bonafide mistake and in such circumstances, the levying of penalty was not justified.

(iii) The grievance of the revenue is that penalty is justified in view of the fact that the respondent-assessee had not filed a revised return of income. However, the Tribunal noted that the time to file revised return had expired. In any event, even the revenue does not dispute that it was a bonafide mistake on the part of the respondent-

assessee. In the above view, imposition of penalty upon the respondent-assessee is not warranted.

(iv) Since the decision of the Tribunal is based on finding of fact, we see no reason to entertain question B.dated 6th

4. Accordingly, the appeal is dismissed with no order as to costs.

(M.S. SANKLECHA, J.)

(J.P. DEVADHAR, J.)

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "E", MUMBAI
BEFORE SHRI N.V.VASUDEVAN(J.M) & SHRI R.K.PANDA(A.M)

ITA NO.1783/MUM/2009(A.Y.2003-04)

Somany Evergreen Knits Limited,
3, Krishna Mahal , Ground Floor,
D. Road, 63, Marine Drive,
Mumbai -20
PAN:AAACS 7258M
(Appellant)

The DCIT 1(3),
Aaykar Bhavan, MK Road,
Mumbai – 20.
(Respondent)

Appellant by : Shri Vishwas v. Mahendale
Respondent by : Shri P.N. Devadasan

ORDER

PER N.V.VASUDEVAN, J.M,

This is an appeal by the assessee against the order of CIT(A) XXI, Mumbai relating to A.Y 2003-04. In this appeal the assessee has challenged the order of the CIT(A), whereby the CIT(A) confirmed the order of the Assessing Officer imposing penalty on the assessee under section 271(1)(c) of the Income Tax Act, 1961 (the Act).

2. Facts and circumstances under which the penalty u/s. 271(1)(c) of the Act was imposed on the assessee by the Assessing Officer are as follows. The assessee is a company engaged in the business of manufacturing of knitted fabrics. The assessee had claimed a sum of Rs.21,68,597/- as deduction being loss on sale of machineries in the garment unit. The assessee had sold some of the machineries of the garment unit. The machineries sold were part of the block of assets on which the assessee had claimed depreciation in the past. Under section 32 of the Act depreciation is allowed on any block of assets at such percentage on the written down value thereof as may be prescribed. Under section 43(6) of the Act written down value of any block of assets has been defined to mean the aggregate value of the WDV of all the assets falling within that block of assets at the beginning of the previous year and adjusted by any increase because of the actual asset falling within that block acquired during the previous year and by reducing the monies payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year. The amount to be reduced should not however exceed the written down value and the additions to the written down value during the previous year. In view of the aforesaid provisions the assessee had already reduced from the block of assets the sale value of the machineries of the garment unit, which was sold during the previous year. The details of the machinery sold in the garment units are as follows:

Book Value	38,40,660.32
Less:-	

Not sold (x)	<u>1,21,063.34</u>
Sold	37,19,597.00
Less:-	
Sale proceed	<u>15,51,000.00</u>
Loss :-	21,68,957.00

It can be seen from the above that the effect of the loss on sale of the machineries of the garment division is already take care of while calculating depreciation on fixed assets of the garment division. In the computation of total income filed by the assessee along with return of income the assessee had added to the loss as per the P&L account, the loss on sale of machineries of garment division. This claim of the assessee was patently erroneous. In the course of assessment proceedings the Assessing Officer pointed out the above irregularity in the claim of loss of sale of machineries of garment division. The assessee accepted the mistake and accordingly the loss claimed in the return of income was disallowed by the Assessing Officer. It is in respect of this disallowance made in the course of assessment proceedings that penalty was imposed on the assessee by the Assessing Officer.

3. Another addition made by the Assessing Officer in the course of assessment proceedings was claim for depreciation made by the assessee. The assessee had claimed depreciation under Income Tax Act for Rs.1,70,99,952/-. We have already seen that in the previous year the assessee had sold some of the machineries of the garment division. The assessee worked out the depreciation claimed on those assets which was sold during the previous year right from the date of purchase of the said machineries. The depreciation so allowed on the machineries was a sum of Rs. 32,51,161/-. The depreciation that the assessee was actually entitled to claim was Rs. 1,38,48,791/-. The statement of depreciation claim is at page 20 of the paper book. From the aforesaid allowable depreciation of Rs. 1,38,48,791/- the assessee reduced the depreciation of Rs.32,51,161/- which was allowed on the machineries sold during the previous year. But while totaling instead of reducing the depreciation of Rs. 32,51,161/- the assessee added the same to the allowable claim of depreciation of Rs.1,38,48,791/-. Thus the depreciation of Rs. 1,70,99,952/- was claimed in the computation of total income. In the course of assessment proceedings when the above error was pointed out the assessee submitted that it was a mistake and since the sale value of the block of assets sold during the previous year had already been reduced from the block of assets there was no need to show the reversal of depreciation of Rs. 32,51,161/- in the depreciation chart. The assessee accepted the above mistake and agreed to the addition of excess claim depreciation of Rs. 32,51,161/-. It is in respect of this addition also that the Assessing Officer imposed penalty on the assessee u/s. 271(1)(c) of the Act.

4. During the penalty proceedings the assessee explained that it was a bonafide mistake on the part of the assessee's chartered accountant in making the aforesaid claim in the return of income. The assessee also pointed out that when the real facts transpired in the course of assessment proceedings the assessee accepted its misunderstanding of the claim made in the return of income and accepted the addition made by the Assessing Officer. The assessee also pointed out that it did not prefer any appeal against the order of the Assessing Officer and submitted that the same proves the bonafide of the assessee. The Assessing Officer,

however, held that the assessee furnished inaccurate particulars of income and imposed penalty on the assessee.

5. On appeal by the assessee the CIT(A) confirmed the order of the Assessing Officer. According to the CIT(A) the assessee did not revise the return of income and accepted the additions made only when the Assessing Officer discovered the same in the course of assessment proceedings. According to the CIT(A) if the assessment of the assessee had not been taken up for scrutiny, the incorrect claim would have been allowed. The CIT(A) was, therefore, of the view that the plea of bonafide mistake put forth by the assessee cannot be accepted.

6. Aggrieved, by the order of the CIT(A) the assessee has preferred the present appeal before the Tribunal.

7. We have heard the rival submissions. The Id. Counsel for the assessee reiterated the stand of the assessee as put forth before the revenue authorities. He further relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Deep Tools Pvt. Ltd., 274 ITR 603(P&H), wherein it was held that bonafide and inadvertent mistake of a chartered accountant while filing a return of income will not amount to furnishing of inaccurate particulars of income. Reliance was also placed on the decision of the Punjab & Haryana High Court in the case of CIT vs. Shahabad Company-operative Sugar Mills Ltd. (2009) ITS 2255[(decision of P&H High Court in ITA No.19 of 2007 (O&M)] dated 12/10/2009, wherein it was held that making a wrong claim for deduction of depreciation of Guest House does not invite an order imposing penalty. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158(SC), wherein it was held that making an incorrect claim does not tantamount to furnishing of inaccurate particulars. The Hon'ble Supreme Court further held that penalty will be attracted only when the details supplied in the return are not true. The Ld. D.R relied on the order of the CIT(A).

8. We have considered the rival submissions. As far as the loss on sale of machineries of the garment unit is concerned, the P&L Account filed by the assessee along with return of income clearly gives a description of the loss as loss on sale of garment unit assets. It is this loss which was added to the net loss as per P&L Account in the computation of total income (under the head prior period income/expenditure/extra ordinary items). The fact that this loss was in respect of assets of the garment unit has been very clearly disclosed in the return of income. The Chartered Accountant of the assessee did not advise the assessee as to the correct legal position and the return of income was filed on the above lines. When this was pointed out in the course of the assessment proceedings the assessee accepted the addition made by the AO. The fixed assets of the garment division clearly show that the assets sold were depreciable assets, thus there was enough evidence available in the documents filed along with the return of income to show that the claim made by the assessee are not in accordance with law. In the above circumstances the plea of the assessee that the claim for deduction was made on account of a bonafide mistake has to be accepted. When all facts are available on record it cannot be said that the assessee attempted to furnish inaccurate

particulars. It is a case making an incorrect claim. The bonafide of the assessee are further established by the fact that no appeal was filed by the assessee against the order of the AO.

9. With regard to the excess depreciation reversed of Rs. 32,51,161/-, it is clearly a mistake on the part of the CA of the Assessee. When assets comprised in the block of assets are sold there was no need to work out the depreciation allowed on those assets and either reduce or add them to the depreciation allowable under the Act. We have already seen that the sale value of the assets sold has to be reduced from the block of assets and no other adjustment is required. Contrary to the above the assessee worked out excess depreciation on assets of garment unit sold during the previous year. In the depreciation chart filed along with return of income these facts have been duly disclosed. Even in respect of this claim it was clearly a case of incorrect claim. As already stated the bonafide of the assessee are established from the facts that the assessee accepted the mistake and did not prefer any appeal against the order of the AO.

10. We are also of the view that the non-furnishing of the revised return does not mean that the bonafide mistake in making a wrong claim should be visited with imposition of penalty. Moreover, the time for filing a revised return had already been expired. In these circumstances we are of the view that the stand of the CIT(A) that the assessee field to file a revised return and, therefore, the plea of bonafide mistake cannot be accepted is an erroneous conclusion. In the given facts and circumstances of the case we are of the view that no penalty should have been imposed on the assessee. We, therefore, direct that the penalty imposed on the assessee be cancelled.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on the 22 nd day of Sept.2010	
Sd/-	Sd/-
(R.K.PANDA)	(N.V.VASUDEVAN)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated. 22nd Sept.2010

Copy to: 1. The Appellant 2. The Respondent 3. The CIT City –concerned
4. The CIT(A)- concerned 5. The D.R”I” Bench.

(True copy)

By Order

Asst. Registrar, ITAT, Mumbai Benches
MUMBAI.

Vm.

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "E", MUMBAI

BEFORE SHRI N.V.VASUDEVAN(J.M) & SHRI R.K.PANDA(A.M)

ITA NO.1783/MUM/2009(A.Y.2003-04)

Somany Evergreen Knits Limited,
3, Krishna Mahal , Ground Floor,
D. Road, 63, Marine Drive,
Mumbai -20
PAN:AAACS 7258M
(Appellant)

The DCIT 1(3),
Aaykar Bhavan, MK Road,
Mumbai – 20.
Vs.
(Respondent)

Appellant by : Shri Vishwas v. Mahendale
Respondent by : Shri P.N. Devadasan

ORDER

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11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on the 22 nd day of Sept.2010	
Sd/-	Sd/-
(R.K.PANDA)	(N.V.VASUDEVAN)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated. 22nd Sept.2010

Copy to: 1. The Appellant 2. The Respondent 3. The CIT City –concerned
4. The CIT(A)- concerned 5. The D.R”I” Bench.

(True copy)

By Order

Asst. Registrar, ITAT, Mumbai Benches
MUMBAI.

Vm.