In the High Court of Judicature at Madras

Dated: 01.03.2017

Coram

The Honourable **Mr.JUSTICE RAJIV SHAKDHER**
and
The Honourable **Mr.JUSTICE M.SUNDAR**

Tax Case (Appeal) Nos.139 to 141 of 2017
and CMP Nos.2395 and 2396 of 2017

Commissioner of Income Tax
Chennai

.... Appellant in the above T.C.(A)s

Vs.

Smt. Anita Kumaran
No.10, Royal Enclave
Besant Avenue, Adyar,
Chennai - 600 020.

.... Respondent in the above T.C.(A)s

APPEALs filed under Section 260A of the Income Tax Act, 1961 against the order dated 19.06.2015 made in I.T.A.Nos.434, 442 and 443/Mds/2014 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai for the assessment years 2008-09, 2009-10 and 2010-11.

For Appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

C.M.P.No.2395 and 2396 of 2017 (Dispense with):

1. Allowed, subject to just exceptions.

T.C.(A)Nos.139 to 141 of 2017:

2. These appeals are preferred by the Revenue as against the common order of the Income Tax Appellate Tribunal (in short 'the Tribunal'), dated 19.06.2015.

3. By virtue of the impugned judgment, a common order was passed qua Assessment Years (A.Y.s) 2008-09, 2009-10 and 2010-11.

4. The common issue, which arose before the Tribunal for consideration was, whether penalty under Section 271(1)(c) of the Income Tax Act, 1961, (in short ' the Act') should be confirmed qua the Assessee.

5. The brief facts, which are required to be noticed are as follows:

5.1. In the concerned A.Ys, the Assessee had claimed deduction towards expenditure incurred on travelling etc. under Section 57 of the Act. Returns were, admittedly, filed in respect of the aforementioned A.Ys. The Revenue reopened the assessments qua A.Ys.2008-09 and 2010-11. In so far as A.Y.2009-10 was concerned, it was picked up for scrutiny and a regular assessment order was

passed.

5.2. In sum, the result of these proceedings was that the assessee, offered for tax, the sum expended on travel by having it included in the taxable income. Accordingly, both tax and interest were paid by the Assessee on the addition made on account of money expended on travel.

5.3. The Revenue, while concluding the reassessment proceedings, qua A.Ys.2008-09 and 2010-11, issued notice under Section 271(1)(c) of the Act, for initiation of penalty proceedings. Likewise, while, concluding the proceedings for A.Y.2009-10, a notice under Section 271(1)(c) of the Act was also issued.

5.4. Consequent thereto, penalty orders were passed for each of the A.Ys. In so far as A.Y. 2008-09 and A.Y.2010-11 are concerned, penalty orders were passed on 29.04.2013, while, for A.Y.2009-10, penalty order was passed on 31.05.2012.

5.5. Being aggrieved, the Assessee preferred appeals qua aforementioned penalty orders to the Commissioner of Income Tax (Appeals -V), [in short 'CIT(A)']. The Assessee, however, did not meet with success. CIT(A) dismissed the appeals vide a common order dated 22.11.2013.

6. It is, in these circumstances, the matter travelled to the Tribunal.

6.1. The Tribunal, allowed the appeals of the Assessee and reversed the order of CIT(A). Aggrieved by the impugned judgment, the instant appeal has preferred.

6.2. Therefore, it would be relevant to examine the reasoning given in the impugned judgment. However, the reasoning given in the impugned judgment is required to be appreciated, in the background of the stand taken by the Revenue before the Tribunal. For the sake of convenience, the relevant parts of the impugned judgment are extracted hereafter:

> *"....3. On the contrary, Shri P. Radhakrishnan, ld. Departmental Representative submitted that the assessee claimed deduction u/s 57 of the Act for all the three assessment years towards travelling and other expenses. During the course of assessment, the Assessing Officer asked the assessee to produce supporting materials for the deduction claimed u/s 57 of the Act. The assessee explained before the Assessing Officer that no records were maintained, accordingly, it was offered for taxation voluntarily. Therefore, according to the ld. DR, it is a clear case of concealment of the income or furnishing inaccurate particulars with regard to the income of the assessee. The CIT(A), after considering the minimum penalty levied by the Assessing Officer, confirmed the same. Therefore, no interference in the order of the CIT(A) is called for.*

4. We have considered the rival submissions on either side and also perused the material available on record. Admittedly, the assessee claims travelling and other expenses for earning income from other sources. During the course of assessment proceedings, the assessee claims that the Accountant engaged by her was not immediately available and the vouchers and other documents were not available for production before the Assessing Officer. Now the question arises for consideration is when the assessee claims a deduction while computing total income towards expenditure and the Assessing Officer disallowed the same for want of evidence, whether the same could be construed as furnishing of inaccurate particulars. The Hon'ble Apex Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd. 322 ITR 158, had an occasion to consider an identical issue. When the assessee by furnishing all details claims a deduction which was otherwise allowable could not produce the material during the course of assessment, does not mean that inaccurate particulars were furnished in the return of income. The claim of the assessee towards expenditure was not substantiated due to temporary absence of the Accountant. Therefore, this Tribunal is of the considered opinion that this is not a fit case for levy of penalty u/s 271(1)(c) of the Act. In fact, the assessee very fairly conceded before the Assessing Officer to offer the said expenditure as income and paid the taxes also. In those circumstances, this Tribunal is of the considered opinion

that levy of penalty u/s 271(1)(c) of the Act is not justified. Accordingly, the orders of the lower authorities are set aside and penalty levied by the Assessing Officer u/s 271(1)(c) of the Act is deleted..... "

(Emphasis is ours)

7. Mr.J.Narayanasamy, learned counsel for the Revenue, says that the judgment of the Tribunal is erroneous, both on law and on facts. Therefore, this Court ought to entertain the appeal and if, persuaded, should reverse the impugned order.

8. We heard the learned counsel for the Revenue and perused the record.

9. According to us, on a perusal of the record, what emerges is that, even though, the assessee had earned income, inter alia, from business, (apart from income from salary, house property and income from other sources), she had claimed deduction for the expenditure incurred on travelling under Section 57 of the Act. The said claim, as per the explanation given by the Assessee, was "wrongly" made by the Accountant under Section 57 of the Act. Having realised that the expenditure incurred towards travelling could not be claimed under Section 57 of the Act, the said sums were offered for tax and, accordingly, both tax and interest was paid by the Assessee.

9.1. This apart, the Assessee, evidently, took a stand before the

authorities below that the claim was made, albeit, on her behalf, by the Accountant, who was no longer in her service. Furthermore, the Assessee also appears to have indicated that for the very same reason, the record and the evidence could not be produced with regard to the expenditure incurred on travelling.

9.2. Pertinently, as observed by the Assessing Officer, the Assessee did concede via her letter, dated 25.07.2012, that the claim made under Section 57 of the Act was untenable.

10. In our view, the Tribunal has appreciated these aspects of the matter and come to the conclusion that the matter in issue would not come within the scope of Section 271(1)(c) of the Act, as it was not a case of furnishing inaccurate particulars.

10.1. Reliance in this behalf was placed by the Tribunal on the judgment of the Supreme Court rendered in ***CIT V. Reliance Petroproducts Pvt. Ltd., [2010] 322 ITR 158.***

11. Mr.J.Narayanasamy, who appears for the Revenue, says that, a more apposite decision would be the judgment of the Supreme Court in: ***MAK Data (P) Ltd. V. Commissioner of Income-tax-II [2013] 38 taxmann.com 448 (SC).***

12. We have examined closely the judgment of the Supreme Court rendered in ***MAK Data (P) Ltd. V. Commissioner of Income-tax-II [2013] 38 taxmann.com 448 (SC).***

12.1. That was a case, where survey was conducted under Section 133A of the Act, which led to revelation of certain documents. The Assessee, upon being confronted with these circumstances, offered to pay tax on money received in the form of share application money by having it treated as income from other sources.

12.2. It is, in this context, the Supreme Court observed that it was not a case of "voluntary disclosure" and, therefore, penalty under Section 271(1)(c) of the Act was rightly levied. This aspect of the matter comes through, upon a close perusal of the following observation made in paragraph 9 of the judgment:

> *".....9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed*

the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. ....."

(Emphasis is ours)

13. As against the aforesaid judgment, to our mind, the facts set out in ***CIT V. Reliance Petroproducts Pvt. Ltd.*** are closer to the case in hand.

13.1. In the said case, the Assessee had claimed expenditure by way of interest incurred, qua loans taken, which was utilised for purchasing IPL shares. The Revenue disallowed the claim, while passing an order under Section 143(3) of the Act. Even while passing an order, notice under Section 271(1)(c) of the Act was issued. The Assessee took the stand that it was not a case of concealment of income or a case of having furnished inaccurate particulars.

13.2. The Asseessee, thus, took the stand that merely because the Revenue had a different view of the matter and had therefore, disallowed the claim, by taking recourse to provisions of Section 14A of the Act - that, by itself could not form the basis of imposing penalty on the Assessee.

13.3. The Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression

concealment of particulars of income and/or furnishing inaccurate particulars of income and went on to observe as follows:

> *".....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...."

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."

(Emphasis is ours)

14. To our mind, in the instant case, what has emerged is that

the Assessee, having realised that the expenditure claimed towards travelling under Section 57 of the Act was not tenable, offered the amounts expended to be added to her income and, accordingly, paid the requisite tax and interest upon the same. In our opinion, this was not a case, where, the Assessee could be said to have either concealed particulars or furnished inaccurate particulars of her income.

14.1. It was, essentially, a case, where, an untenable claim for deduction of travel expenditure under Section 57 of the Act had been made and that too based on the advise of a professional, i.e., an Accountant.

15. Therefore, we are of the view that no interference is called for with the judgment of the Tribunal.

16. Resultantly, since, we find that no question of law much less any substantial question of law arises for consideration in the captioned appeals, in our view, they deserve to be dismissed. It is ordered accordingly.

Index: Yes/No (R.S.A.,J) (M.S.,J)
01.03.2017

sl

To

The Income Tax Appellate Tribunal, 'A' Bench, Chennai

RAJIV SHAKDHER,J.
AND
M.SUNDAR,J.

Sl

Tax Case (Appeal) Nos.139 to 141 of 2017
and CMP Nos.2395 and 2396 of 2017

01.03.2017

http://www.judis.nic.in