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A-228
9-12-09

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: " A " : NEW DELHI

BEFORE SHRI G.E. VEERABHADRAPPA, HON'BLE V.P. &
SHRI I.P. BANSAL, J.M.

ITA No.29/Del/2009

Asst. Year: 2001-02

M/s. Baldev Woollen
International,
Baba Ganga Puri Road,
Panipat.
(PAN – AACFB 8601 J)
[Appellant]

Vs. Income Tax Officer, Ward-2,
Panipat.

[Respondent]

Appellant by : Ms. Rano Jain, C.A.
Respondent by : Ms. Pratima Kaushik, Sr. D.R.

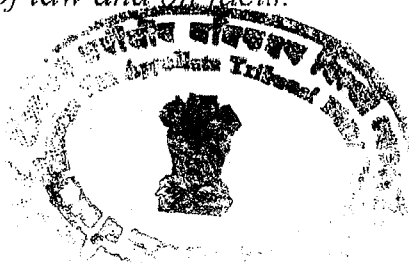
ORDER

PER I.P. BANSAL, J.M.:

This is an appeal filed by the assessee. It is directed against the order of the Id. CIT(A) dated 31.10.2008 for the Assessment Year (A.Y.) 2001-02.

2. The grounds of appeal read as under :-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) (CIT(A)) is bad, both in the eye of law and on facts.



2. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in ignoring the contention of the appellant that no penalty is leviable as the appellant has disclosed all facts in the return filed by the appellant and as such there is neither concealment nor furnishing inaccurate particulars of income.*

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on fact and in law, in rejecting the contention of the assessee that the penalty for concealment can not be levied, as the disallowance made arises out of a controversial and debatable issue in view of varied decisions given by different courts.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the penalty u/s 271(1)(c) ignoring the fact that penalty proceedings are independent proceedings and even in cases where disallowance is sustainable, no penalty may be levied.*

5. *That the appellant craves leave to add, amend or alter any of the grounds of appeal."*

3. While computing deduction under section 80IB of the Income-tax Act, 1961 ('the Act' hereinafter) the assessee considered Export Incentive i.e., duty draw back/DEBP of Rs.23,95,117/- being amount eligible for deduction. The said amount was reduced from eligible profit inter alia according to decision of Hon'ble Supreme Court in the case of CIT vs. Sterling Foods India, 237 ITR 379. Penalty under section 271(1)(c) of the Act was also initiated and consequently present penalty has been levied on the assessee for having claimed deduction under section 80IB of the Act on

the amount of Duty Drawback/DEPB. The levy of penalty has been confirmed by the Id. CIT(A) by taking a view that the claim of deduction under section 80IB on DEPB and Duty Drawback is no more debatable issue as it has been settled to rest by the Hon'ble Punjab & Haryana High Court in the case of Liberty India vs. CIT, 293 ITR 520. The assessee is aggrieved and hence in appeal.

4. After narrating the facts, it was submitted by the Id. A.R. that question as to whether under section 80IB deduction is allowable on Export Incentive has been a question of debate. She contended that Delhi Benches of I.T.A.T. have been taking a consistent view that on such claim penalty under section 271(1)(c) is not applicable. For reference she relied upon the decision of Delhi Benches dated 02.04.2009 in the case of M/s. Oriental Drugs Company vs. ACIT (ITA Nos.3629 & 3630/Del/2008 and others), a copy of which has been placed on record. She also relied upon various other decisions. However, for the sake of brevity as almost all the decisions have been considered by the Division Bench for deciding a similar issue, we are not referring to them.



5. On the other hand, Id. D.R. relied on the order of A.O. and the Id. CIT(A) but she pleaded that even Hon'ble Supreme Court vide latest decision in the case of Liberty India vs. CIT (2009) 183 Taxman 349, has upheld the Punjab & Haryana High Court by holding that Export Incentives in the nature of Duty Drawback receipt/DEPB benefit cannot form part of the net profit of eligible industrial undertaking for the purpose of section 80I/80IA/80IB of the Act. Thus, it was pleaded that the Id. CIT(A) was right in upholding the penalty and his order should be upheld.

6. We have carefully considered the rival submissions in the light of the material placed before us. The return in the present case was filed by the assessee on 29.10.2001. The claim of the assessee under section 80IB of the Act on Duty Drawback/DEPB has been disallowed by the A.O. vide impugned Assessment Order dated 14.01.2004 passed under section 143(3) of the Act. The decision of Hon'ble P&H High Court (jurisdictional High Court) in the case of Liberty India vs. CIT Karnal is dated 22nd September 2006. No doubt that the law interpreted by the jurisdictional High Court and the Hon'ble Apex Court is the correct law since inception but at the same time, it is a case where the assessee has made a claim and there was a great debate regarding allowability or otherwise of such claim. Thus, it cannot be

said that the view point of claiming deduction under section 80IB of the Act on Export Incentive was all together baseless. In the assessment order itself reference has been made by the assessee to the following decisions to contend that such claim of the assessee is allowable :-

CIT vs. Ahmedabad Manufacturing & Calico, 137 ITR 616 (Gujrat);
Gwalior Rayon Silk Manufacturing (Wvg) Co. Ltd. vs. CIT, 143 ITR
590 (Madhya Pradesh).

7. However, relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Sterling Foods India (supra), the A.O. disallowed the claim of the assessee. We find that even after pronouncement of the decision in the case of Liberty India vs. CIT by the Hon'ble P&H High Court, Hon'ble Delhi High Court has taken other view in the case of CIT vs. Elteck SGS Pvt. Ltd., 300 ITR 6 wherein it has been held that duty draw back is profit and gain derived from the industrial undertaking, and therefore, the assessee was entitled to deduction under section 80IB on custom/duty draw back. This decision is dated 19th February, 2008. Thus, there cannot be any dispute to the extent that there was a debate when the assessee filed the return of income. Hon'ble P&H High Court in the case of CIT vs Tek Ram (HUF), 300 ITR 354 has held that in a case where two views were clearly



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possible on the issue which was apparent from the decision of various High Courts as well as of the Hon'ble Supreme Court, the claim of the assessee can be said to be based on one possible view and though the claim was not accepted in the quantum proceedings in view of difference of opinion, making of such claim bonafide on the basis of possible view could not be treated as concealment of its income by the assessee or furnishing of inaccurate particulars of such income so as to attract penal provisions of section 271(1)(c) of the Act. Similar view has been expressed by Hon'ble P&H High Court in the case of CIT Vs Kartar Singh, 14 DTR 68 (P&H). There is no material brought on record by the Department to show that any of the particulars submitted by the assessee were wrong. Full particulars are disclosed. Therefore, keeping in view the above discussion, we are of the opinion that it is not a fit case where levy of penalty can be held to be justified. Accordingly, penalty is deleted and the appeal is allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on ... 27/11/09

(G.E. VEERABHADRAPPA)
VICE PRESIDENT

(I.P. BANSAL)
JUDICIAL MEMBER

Dated : 27 November, 2009
PBN/*

Copy forwarded to:

1. Appellant *By Hand*
2. Respondent
3. CIT
4. CIT(A)
5. D.R., ITAT



By Order,

Dy. Registrar,
 ITAT, Delhi Benches
 Assistant Registrar
 आयकर अपील अथकरी
 Income Tax Appellate Tribunal
 दिल्ली बेंच, नई दिल्ली
 Delhi Benches, New Delhi

