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Cit Vs. Transceivers India Ltd

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Court : Delhi

Decided On : Jan-28-2015

Judge : S.Ravindra Bhat

Appellant : Cit

Respondent : Transceivers India Ltd

Advocate for Def. : Dr. Rakesh Gupta, Mr. Mukul Mathur

Advocate for Pet/Ap. : Mr. Rohit Madan

Judgement :

$~21 * IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

28. 01.2015 + ITA12242011 CIT ..... Appellant Through: Mr. Rohit Madan, Sr. Standing Counsel. versus TRANSCEIVERS INDIA LTD ..... Respondent Through: Dr. Rakesh Gupta with Mr. Mukul Mathur, Advocates. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE R.K. GAUBA S.RAVINDRA BHAT, J.

(OPEN COURT) 1. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (hereafter referred to as ITAT) dated 11.02.2011 upholding the Appellate Commissioners direction to delete the penalty imposed upon the assessee, for furnishing inaccurate particulars under Section 271 (1) (c) of the Income Tax Act, 1961 (hereafter referred to as Act).

2. The brief facts - for the purposes of the present appeal - are that for Assessment Year (AY) 2001-02, the assessee, which used to supply technical equipments to Government agencies, claimed certain expenditure of Rs.69,67,886/- as commission to one M/s Simoco and ITA12242011 Page 1 Rs.2,65,32,114/- as professional and technical fees to the same concern. The Assessing Officer (AO) did not accept these expenditures, and computed the total income at Rs.4,79,23,280/-. The assessee was unsuccessful before the appellate Commissioner and ITAT. Even this Court refused to frame the substantial question of law and dismissed its appeal under Section 260A.

3. In the meanwhile, the AO had initiated proceedings by issuing show cause notice to the assessee on 27.01.2006. The penalty proceedings culminated in an order of 29.03.2006, whereby the sum of Rs.1,32,49,250/- was directed to be paid. The assessee appealed, contending that the record did not justify the AOs conclusion that it had furnished inaccurate particulars. The CIT (A) upheld the assessees contentions and upset the findings of the AO. It was held by the CIT (A) as follows:

6. I have very carefully gone through the whole issue along with the submissions of the ld. AR. It is a case where payments of Rs. 69,67,886/- and Rs.2,65,32,114/have been made to STSAL for commission and as technical fees, respectively. During the course of assessment proceedings, in respect of commissions claimed, the appellant had pointed out that on account of these services rendered by STSAL, it could successfully procure the orders which brought profits to the company and it is out of such profits that the commission had been parted with. The appellant has also tried to explain the reasons of obtaining services of STSAL as it was a big supplier of its various products to the Railways, for which reason it was easy for the appellant to get their products accepted by the Railways, though on merits of the products. It has been further submitted that but for these services, the orders would not have been procured and ITA12242011 Page 2 thus the justification of incurrence of these expenses has been explained. I further find that the appellant furnished large number of documents, including the copy of appointment letter as well as the confirmation from the payee i.e. STSAL. It also cannot be over looked that STSAL was a MNC at that point of time and this

transaction stands confirmed by them. Thus, I find that the appellant has furnished prima facie justifiable explanation which stands supported by various documentary evidences as mentioned in the penalty order as well as in the submissions made by the ld. AR, as incorporated above. All these facts show that it is a case where a prima facie explanation has been given and all relevant facts and other information has been brought on record by the appellant. Thus, although additions may be sustained in quantum proceedings, it is not a fit case for invoking provisions of section 271(1)(c). Similarly, on the issue of payment of technical fees of Rs. 2,65,32,114/- to STSAL, the facts and circumstances are more or less similar. While commission has been claimed to have been paid for availing the services of STSAL for procuring the orders, the reason for paying that technical fees to STSAL is different. It is that STSAL was a MNC, being in the line of manufacturing of products of the same family in which the appellant was trading. As claimed by the appellant, for maturing the sales of these sophisticated items being telecommunication products including wireless sets and other similar products to para-military forces, state police, Government of India, Central Water Commission and authorized department etc., it was not possible to conduct the business in the absence of availability of this infrastructure. It has also been explained that it is on account of the tie-up with STSAL that the appellant could conduct his business in a better way and more effectively. It has also been submitted that the turnover increased tremendously after this tie-up with STSAL. I also find that the appellant has substantiated his claim by filing various documentary evidences including agreement with the ITA12242011 Page 3 payee and the confirmation was sent directly by the payee to the AO u/s 133(6) of the I.T. Act. Thus, I find that for this expenditure, the appellant has furnished all relevant information and details, has given prima facie plausible explanation justifying the said claim, has duly furnished necessary documentary evidences to support his explanation; therefore, on these facts, although the additions may have been sustained, I am of the considered opinion that these facts and circumstances do not invite the provisions of section 271(1)(c) of the I.T. Act.

4. The ITAT upheld the CIT (A)s determination in the impugned order upon Revenues appeal. It was held as follows:

5. We have considered the facts of the case and submissions made before us. The facts are that the assessee has been supplying Radio (wireless) equipments to various Government organizations under DGS&D rate contract. In this year, the assessee inter-alia debited sale commission of Rs. 90,27,060/- and professional and technical fees of Rs.2,83,42,914/- in the profit and loss account as direct cost and other expenses, aggregating to Rs. 19,49,70,167/-. Schedule 9 gives the details of these expenses where sales commission and professional and technical fees expenses have been shown separately. Out of these expenses, two amounts are in respect of Simoco, being Rs. 69,67,886/- as commission and Rs. 2,65,32,114/- as professional and technical fees. The assessee has filed agreements with Simoco to justify the deduction of expenditure. It has also filed confirmed accounts from Simoco, from which it is seen that the payments have been made in this very year, and tax has been deducted at source and paid to the credit of the Government. In this year, Simoco was a company belonging to Phillips group, U.K. Thus, at the time of incurring the expenditure and payment thereof, there was no connection between the assessee and the payee. ITA12242011 Page 4 Simoco also furnished details of orders procured and services rendered in response to the notice issued by the AO. However, at the time of furnishing the reply, Simoco had been taken over by the assessee company. Simoco had also been carrying on the business similar to the business of the assessee. Both the payments made to the Simoco were disallowed by the AO. The disallowance has been confirmed even by Honble Delhi High Court. The main reason for disallowance is that the assessee could not produce any correspondence between it and Simoco or Simoco and the buyers in regard to procuring sales orders or rendering services to the buyers. The test of human probabilities has been invoked for making the disallowance. 5.1 The AO has also levied penalty in respect of these disallowances. The penalty has been deleted by the ld. CIT(Appeals). The case of the ld. DR is that no further evidence has been adduced by the assessee in the course of penalty proceedings. Therefore, there is no further advancement after the receipt of the decision of Honble Delhi High Court in quantum appeal. The explanation furnished by the assessee that the expenditure has been incurred in the course of business has not been substantiated. Therefore, penalty is leviable on the facts and in the circumstances

of the case. On the other hand, the case of the ld. counsel is that for deduction of an expenditure in computing the total income, the assessee has to prove that it has been incurred wholly and exclusively for the purpose of business. The assessee is not required to show that it was necessary for him to incur expenditure either under an agreement or in law. Nonetheless, in this case, expenditure has been incurred under the agreement. Assessment and penalty proceedings have to be viewed differently. Confirmation of the addition does not per se lead to levy of penalty. In penalty proceedings, it has to be seen as to whether the explanation of the assessee is bona fide or not, and all ITA12242011 Page 5 facts relating to assessment have been disclosed to the AO. The assessee has disclosed all facts in the return of income, which was accompanied by annual accounts, in which the expenditure has been shown clearly and separately in schedule-9. The expenditure has been incurred under agreements. The services rendered by Simoco have led to nearly doubling of the turnover in the immediately succeeding year. Further, the expenditure was incurred in the course of business because the Railways wanted life time warranty of imported goods. Similar expenses were incurred in past by engaging the services of Linkers. Thus, the explanation of the assessee is bona fide. 5.2 We may now examine the case laws relied upon by the rival parties. The ld. DR relied on the decision in the case of Dharmendra Textile Processors (supra), in which it has been held that the levy of penalty is a civil liability, which has to be decided on the basis of the provision contained in section 271(1)(c) and Explanations thereto. This decision is a binding precedent. In view of this decision, the revenue is not required to establish mens rea and what is to be seen is whether the explanation furnished by the assessee is bona fide or not. For the sake of ready reference, the relevant portion of the judgment is reproduced below:

It is of significance to note that the conceptual and contextual difference between section 271(1)(c) and section 276C of the Income-tax Act was lost sight of in Dilip N.Shroffs case [2007]. 8 Scale 304 (SC). The Explanations appended to section 271(1)(c) of the Income-tax Act entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The judgment in Dilip N. Shroffs case [2007]. 8 Scale 304 (SC) has not considered the effect and relevance of section ITA12242011 Page 6 276C of the

Income-tax Act. The object behind the enactment of section 271(1)(c) read with the Explanations indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C of the Income-tax Act.

5. Before us, learned counsel for the Revenue relied upon the decision of the Supreme Court in Commissioner of Income Tax, Delhi v. Atul Mohan Bindal, (2009) 9 SCC589and urged that to determine whether the assessee has furnished inaccurate particulars, mens rea is irrelevant. Counsel urged that being a strict liability provision, the Court is bound to interpret it, in its terms, without requiring the Revenue to attribute mens rea. Learned counsel also relied upon Union of India v. Dharmendra Textile Processors (2008) 306 ITR277 which stated that for penalty under provisions of civil liability, wilful concealment is not an essential ingredient for attracting such civil liability.

6. In the present case, records would indicate that in the course of the proceedings, the enquiries were made from Simoco and its books and returns were apparently scrutinized. These showed that the amounts received by the said concern were reflected. That apart, TDS deductions and deposits were also made in respect of the fees and amounts paid to the Simoco. Furthermore, Simoco was itself owned by third concern, i.e., Phillips UK. The assessee had explained the need to engage Simoco, i.e., that its ability to market its products, was ITA12242011 Page 7 restricted on account of lack of technical expertises and personnel. To substantiate this, it relied upon the response given by various government agencies/users, which had, in fact, stated that Simocos representative used to visit it on behalf of the assessee.

7. This Court is of the opinion that there can be no doubt that mens rea or willingness is not an essential principal requisite for initiation and imposition of penalty under Section, 271 (1) (c), yet, it is important to notice that the provision itself is discretionary and the assessee is free to furnish the justification for a particular conduct - in the present case, of claiming certain expenditure. That ultimately such expenditure was disallowed on merits could not automatically

result in the imposition of a penalty, akin to the AOs approach. Having regard to the materials placed on the record, which were analysed in detail and discussed, this Court is of the opinion that the reasoning and conclusions of the courts below being entirely facts based, do not involve determination of any substantial question of law. The appeal is, therefore, dismissed. S. RAVINDRA BHAT (JUDGE) R.K.GAUBA (JUDGE) JANUARY28 2015 /vikas/ ITA12242011 Page 8

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