

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No.5100/Del/2011
AY: 2004-05**

Oxford Softech P.Ltd.
A 6/3, Vasant Vihar
New Delhi 110 057

vs. ITO, Ward 13(1)
New Delhi

PAN: AAACO 4916 E

(Appellant)

(Respondent)

Appellant by : Shri Salil Kapoor, Adv.
Sh. Vinay Chawla, Adv. And
Ms.Ananya Kapoor, Adv.

Respondent by : Sh. P.Damkanunjna, Sr.D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of Ld.CIT(A)-XVI, New Delhi dated 29.7.2011 pertaining to the A.Y. 2004-05, wherein a penalty levied by the Assessing Officer (AO) u/s 271(1)(c) of the Income Tax Act, 1961 (the Act) was confirmed by the First Appellate Authority.

2. Facts in brief:- The assessee is a company and is engaged in providing certain services including air conditioning, generator backup, interiors, electric, wooden fixtures and fittings etc. to its clients M/s Global Vantage (P) Ltd. and M/s Ephinay India (P) Ltd. The assessee claimed deduction u/s 80 IA of the Act to

the extent of 100% of its gross total income i.e. Rs.36,80,723/-.

The order in Form 10CCB r.w. Rule 18BBB was filed with the return of income. The assessee has claimed that it is engaged in (i) developing, (ii) operating and maintaining (iii) developing, operating and maintaining, infrastructure facility. The A.O. records that the assessee company had enclosed copy of agreements of Service Agreement, Hire Agreement for interiors and Hire Agreement for air conditioning and power, between assessee company and its clients namely M/s Global Vantedge Pvt. Ltd. and M/s Ephinay India Pvt.Ltd. The A.O. disallowed the claim for deduction u/s 80 IA. He relied that (a) the assessee is merely providing certain interiors, furniture, fixtures and generator back up power services etc. for BPO/Software companies which are lessees of the building owned by its Director and has received services and hire charges for the same. (b) the assessee is not engaged in the business of developing, operating and maintaining, the infrastructure facilities as specified in Sec.80 IA of the Act. c) The audit report submitted by the assessee in form no.10 CCB does not mention the sub section of s.80 IA of the Act under which the assessee was claiming deduction in column no.7 of the audit report. (d) The assessee could not submit the specific provision of Sec.80 IA under which it was claiming deduction. (e) Reliance placed by the assessee on certain case laws and approvals of Dy.Director/Director of Software Technology Park of India for claiming deduction u/s 80 IA, which is extracted in the assessment order is not warranted for the reason that, the guarantee card etc. are issued to the assessee company for

approval of 100% software export unit status under Software Technology Park Scheme and has no connection with claim for deduction u/s 80 IA. (f) The Dy.Director/Director of STPI is not the competent authority to allow deduction u/s 80 IA of the Act as per provisions of the law in the case of the assessee.

2.1. Thus he denied the deduction.

2.2. Aggrieved the assessee carried the matter in appeal. When the matter came for hearing before the First Appellate Authority, the assessee withdrew the appeal. It is claimed by the assessee that there was a change in the Counsel and he was advised to withdraw the appeal.

2.3. The A.O. thereafter levied penalty u/s 271(1)(c) of the Act on the ground that the assessee has furnished inaccurate particulars of income. On appeal the First Appellate Authority confirmed the same. Further aggrieved the assessee is before us on the following grounds.

“1. That the authority below has erred on facts and in law in upholding penalty u/s 271(1)(c) of the Act amounting to Rs.13,20,460/-.

2. That the authority below has arbitrarily disregarded the explanation filed and evidence filed on record.

3. That the penalty levied u/s 271(1)(c) of the Act deserves to be cancelled which is in contravention of settled legal position.”

3. The Ld.Counsel for the assessee Mr.Salil Kapoor stated that the assessee was guided solely by legal advise in making this claim u/s 80 IA. He argued that these are complicated provisions of law and the claim was made on a bonafide belief

that the assessee is entitled for the same. Secondly he submitted that all the particulars with respect to the claim along with an auditor's report were furnished along with the return of income and hence there was no concealment. He pointed out that the claim was supported by a report of the tax auditor u/s 80 I(7) in form no.10CCB r.w.Rule 18BBB and submitted that the professional advise resulted in the assessee making the claim. He further relied on the Certifications from STPI to demonstrate the bonafide of the assessee. He relied on the following case laws.

- i. CIT vs. Reliance Petroproducts P.Ltd. (2010) 322 ITR 158 (SC).
- ii. Haryana Financial Corporation vs. DCIT Chandigarh B Bench in ITA 211/Ch./2010 order dt. 9th September,2010.
- iii. CIT vs. Smt.Rita Malhotra 154 ITR 550 (Del)
- iv. CIT vs. Shyama A Bijapurkar ITA 842/2010 (Del) judgement dt. 13.7.2010

4. The Ld.D.R. Mr.P.Damkanunjna on the other hand strongly opposed the contentions of the assessee. He took this Bench to the assessment order and argued that a blatantly wrong claim has been made by the assessee and hence it is a case of furnishing of inaccurate particulars of income. He argued that the claim of deduction u/s 80 IA is not allowable and the assessee has made deliberate attempt to reduce its taxable income and hence it is not a bonafide mistake. He referred to auditor's report in form 10CCB and submitted that nowhere in the audit report the sub section under which the claim was

made has been given. Similarly he submitted that the STPI authorities have registered the assessee for computer software exports and not for supply of air conditioners etc. He tried to demonstrate the falsity of the claim made by the assessee and submitted that the penalty has to be sustained.

5. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, and a perusal of orders of lower authorities, case laws cited, we hold as follows.

6. The assessee has made a claim u/s 80 IA of the Act. Along with the return of income the assessee filed report from a Chartered Accountant in form no.10 CCB as required u/s 80 IA(7) of the Act. The claim was made on the advice of the auditors. A perusal of this audit report demonstrates that the auditors of the assessee also believed that the assessee was eligible for deduction u/s 80 IA of the Act. It was a conscious claim made by the assessee supported by an audit report. The assessee has also made an application to STPI for setting up the infrastructure facilities under the STPI Scheme. All details of the claim made u/s 80 IA are filed by the assessee, along with the return of income. Under these circumstances we are of the considered opinion that the explanation given by the assessee that it was under a genuine belief that it was entitled for relief u/s 80 IA of the Act is bonafide. The assessee acted under the guidance and advice of a Chartered Accountant. Hence in our view it was under a bonafide belief that it is entitled to the claim for deduction under provisions of s.80 IA of the Act.

6.1. The provisions under the Income Tax Act are highly complicated and its different for a layman to understand the same. Even seasoned tax professionals have difficulty in comprehending these provisions. Making a claim for deduction under the provisions of S.80 IA of the Act which has numerous conditions attached, is a complicated affair. It is another matter that the assessing authorities have found that the claim is not admissible. Under these circumstances we hold that it cannot be said that this is a case of furnishing of inaccurate particulars of income.

6.2. In the case of CIT vs. Shyama A Bijapurkar (supra) the Hon'ble Delhi High Court has held as follows.

“On a further appeal being preferred before the Tribunal, the Tribunal took note of the facts namely – that the assessee had filed the return treating it as a long term capital gain on the basis of advice given by a tax consultant, that it was not a case where it could be said that there was concealment or furnishing of inaccurate particulars inasmuch as the claim was put forth on the basis of an opinion of a tax consultant, and that the assessee was under an impression, a bona fide one, that the tax on the employees stock option plan could be a long term capital gain.

In our considered opinion the reasons ascribed by the Tribunal are cogent and germane and we are disposed to think that the assessee had bonafidely made a claim for getting the benefit of long term capital gain and, therefore, the imposition of penalty u/s 271(1)(c) was really not attracted. Thus, the conclusion arrived at

by the Tribunal is absolutely impeccable and accordingly, we concur with the same.”

6.3. In the case of CIT vs. Smt. Rita Malhotra (supra) it was held as follows:

“On these facts, no question of law arises, because the only case arising from the facts was that the assessee claimed deduction, which was wholly disallowed and then partly allowed. There is nothing false about the claim except that it was wrongly made in full. The assessee has a right to make any claim, which may or may not be disallowed. When the premises are partly used for business and partly for residence, the apportionment of the amount to be allowed or disallowed has to be made by the ITO u/s 38 of the Act. This is not a case of concealment of income and in our view, no question of law arises. The application and the connected applications are dismissed. As there is no appearance for the respondent, there will be no order as to costs.”

7. Applying the propositions laid down in these case laws to the facts of the present case, we cancel the penalty levied u/s 271(1)(c) of the Act and allow the appeal of the assessee.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 07th April, 2016.

Sd/-

**(BEENA PILLAI)
JUDICIAL MEMBER**

Sd/-

**(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: the 07th April, 2016

- Manga

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR