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HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 3

Case :- INCOME TAX APPEAL No. - 1 of 2016

Appellant :- Pr. Commissioner Of Income Tax-li

Respondent :- M/S Hariom Steels (P) Ltd.

Counsel for Appellant :- Shubham Agarwal

Hon'ble Pankaj Mithal,J.

Hon'ble Siddhartha Varma,J.

The appeal is directed against the order of the Tribunal dated 20 August 2015.

The only point arising in this appeal is regarding the levy of penalty under Section 271(1)(c) of the Act in respect of sales to parties covered under Section 40A (2)(b) of the Income Tax Act.

It appears that in the assessment year 2006-07 certain scrap was sold by the assessee to parties not covered under Section 40A (2)(b) of the Act @ Rs. 17,340/- per metric tone whereas it was sold @ Rs. 5000/- per metric ton to parties covered under Section 40A (2)(b) of the Act. Thus, the value of the difference of the scrap sold was added to the income of the assessee and accordingly, penalty of Rs. 46,25,000/- was imposed under Section 271 (1)(c) of the Act.

The Tribunal by the impugned order has held that the assessee cannot be held guilty for non-disclosure of income, which was determined by invoking discretionary jurisdiction under Section 40A (2)(b) of the Act.

In this view of the matter, the Tribunal held that where deeming provisions are applied in assessing the income, the provisions of imposing penalty would not be attracted.

In S.V. Kalyanam Vs. Income Tax Officer (2011) 237 CTR (Mad) 491, the Division Bench of the Madras High Court has held that where additions are made in the income by applying the deeming provisions the department cannot presume that there is concealment of income so as to attract penalty proceedings.

In other words, where income is assessed on the basis of deeming provisions it would not amount to non-disclosure and as such it is not proper to impose penalty under Section 271 of the Act.

In Commissioner of Income Tax Vs P. Rojes (2013) 260 CTR (Mad) 397, again a Division Bench of the Madras High Court has held that penalty under Section 271 (1)(c) of the Act cannot be imposed on the basis of estimation of income. In the aforesaid decision, reliance was placed upon the decision of the Supreme Court in C.I.T. vs. Reliance Petroproducts Pvt.Ltd (2010) 230 CTR (SC) 320 in which it was observed that in order to bring the case under Section 271 (1)(c) of the Act there has to be concealment of particulars of the income of the assessee and the assessee must have furnished inaccurate particulars of his income. It further held that making an incorrect claim in law cannot tantamount to furnishing of incorrect particulars so as to attract the penalty provisions.

In view of the aforesaid facts and circumstances, as in the present case, there is no concealment of income or furnishing of an incorrect particulars of the income, the penalty cannot be imposed on account of addition of income by applying the deeming provisions.

Accordingly, we are of the opinion that the Tribunal has not committed any error of law in removing the penalty imposed by the Assessing Authority.

The appeal has no merit and is, accordingly, dismissed.

Order Date :- 3.7.2017

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