IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI PAWAN SINGH, JM

ITA No.1052/Mum/2015
(**Assessment Year :2008-09**)

M/s. Hindustan Oil Exploration Company Ltd., Anand House, Khatwari Darbar Road, Off Linking Road, Khar (W) Mumbai – 400 052	Vs.	DCIT – 9(2), Mumbai
PAN/GIR No.		**AAACH1407P**
Appellant)	..	**Respondent**)

Assessee by	Shri V. Chandrashekhar with Shri Harshad Shah
Revenue by	Shri Rahul Raman
Date of Hearing	**20/10/2016**
Date of Pronouncement	**23/12/2016**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

This is an appeal filed by the assessee against the order of CIT(A) for the assessment year 2008-09 in the matter of penalty imposed u/s. 271(1)(c) of the IT Act.

2. The following grounds have been taken by the assessee.

1. General
1.1. The orders of the learned Assessing Officer (hereinafter referred to as "the Ld AO") and the learned Commissioner of Income Tax (Appeals)-20 (hereinafter referred to as "the Ld CIT(A)") are contrary to the principles of equity and natural justice, violate the provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), are against well settled principles of law, and are liable to be struck down.

2. Levy of penalty under section 271(1)(c) of the Act on disallowance under Section 42(1)(b) of the Act

2.1. The Ld CIT(A) has erred in confirming the penalty levied by the Ld AO in respect of disallowance under section 42(1)(b) of the Act when there was no concealment of income or furnishing of inaccurate particulars of such income by the appellant.

2.2. The Ld CIT(A) and the Ld AO have failed to consider the fact that the appellant has furnished all the information required by the Ld AO and the Ld CIT(A) during the assessment and appellate proceedings as is evident from the assessment order and the appellate order passed under section 143(3) and section 250 of the Act respectively.

2.3. The Ld CIT(A) has erred in ignoring the fact that contracts and service orders evidencing the nature of activities and expenditure incurred by the appellant were furnished by the appellant during the assessment and appellate proceedings, as explicitly acknowledged in the predecessor CIT(A)'s order in the quantum appeal for AY 2008-09.

2.4. The Ld CIT(A) has erred in stating that the claim for deduction under section 42(1)(b) of the Act was not substantiated by the appellant and that only legal submissions were furnished with reference to applicability of the provisions of the Act.
2.5. The Ld CIT(A) has failed to appreciate that the fact that drilling expenditure was incurred in certain blocks which had commenced commercial production was not disputed by the AO nor the predecessor CIT(A) in the assessment and the appellate order passed under section 143(3) and section 250 of the Act respectively.

2.6. The Ld CIT(A) has erred in not appreciating that the appellant's claim under section 42(1)(b) of the Act was not allowed by the Ld CIT(A) in the quantum appeal only on the basis that all the blocks, in respect on which the expenditure was incurred and claimed, were operational and had commenced commercial production and that the CIT(A) was unable to comprehend the reasons why drilling operations were undertaken when the blocks had commenced commercial production.

2.7. The Ld CIT(A) has erred in confirming the penalty levied in respect of disallowance under Section 42(1)(b) of the Act even after taking note of the order of the Hon'ble Income Tax Appellate Tribunal ("Tribunal"), in the appellant's own case for AY 2007-08, which clarified the requirement of drilling

expenditure even after commencement of commercial production.

2.8. The Ld CIT(A) has erred in confirming the penalty levied in respect of disallowance under Section 42(1)(b) of the Act by stating that the appellant's claim under section 42 of the Act, for the AY 2009-10, was not in respect of drilling and exploration activities.

2.9. The Ld AO and the Ld CIT(A) have erred in levying penalty without considering the fact that penalty is not automatic for every adjustment made in the assessment or appellate proceedings by not accepting the claims made by the appellant during the assessment.

3. For these and such other grounds that may be raised either prior to or during the course of hearing.

2. Rival contentions have been heard and record perused.

3. In this case, AO levied penalty with regard to disallowance of deduction claimed for exploration expenditure incurred in the business of prospecting u/s.42(1). The CIT(A) confirmed the quantum addition against which assessee approached to the Tribunal and Tribunal vide its order dated 19/02/2016 set aside the matter to the file of the AO for deciding afresh after following the judgment of Tribunal in assessee's own case for the immediately preceding assessment year 2007-08, Order dated 07/02/2014.

4. Learned AR placed on record the order of the Tribunal in the penalty matter dated 31/08/2015, wherein penalty imposed with respect to the very same addition which was restored by the Tribunal, was deleted by CIT(A) and Tribunal had confirmed the order of CIT(A) deleting the penalty. We had carefully gone through the order of the Tribunal wherein Tribunal confirmed deletion of penalty after observing as under:-

6. The last limb of the addition on which penalty has been levied is with regard to a disallowance of deduction claimed for exploration expenditure incurred for the business of prospecting for or extraction/production of oil under section 42(1) of the Act amounting to Rs.7,57,80,104/-. In the return of income assessee had claimed deduction for producing property for prospecting business under section 42(1) of the Act.

6.1 At the time of hearing, Ld. Representative for the assessee pointed out that in the quantum proceedings, the issue came up before the Tribunal and vide its order dated 7/2/2014(supra), the matter was restored back to the file of Assessing Officer for a decision afresh.

6.2 Ld. Departmental Representative pointed out that the Assessing Officer was justified in levying the penalty as the deduction claimed by the assessee in the return of income was for depletion in producing the property, which is reflected in the fixed assets block and, therefore, it was a disallowable item and the Assessing Officer was justified in adding it to the returned income. As a wrong claim was made, the penalty u/s. 271(1)(c) of the Act has been rightly made.

6.3 On the contrary, the claim of the assessee has been that such expenditure represented aggregate of expenditure incurred in respect of development of oil block from which oil/gas has been found and commercial production has commenced. For the purpose of tax computation, assessee considered the actual expenses incurred as deduction which was worked out proportionately on the basis of total oil/gas reserves estimated from such blocks and the actual oil/gas produced during the year. The assessee had justified the claim of deduction under section 42(1) of the Act read with the Production Sharing Contract (PSC) entered into with the Government of India. Section 42 of the Act is a special provision for deductions in the case of business for prospecting for extraction or production of mineral oils, etc. It, inter-alia, prescribes for deduction of certain expenses incurred for such businesses. Broadly speaking, section 42(1) of the Act speaks of admissibility of deduction of three types of allowances, provided they are specified in the respective Production Sharing Contracts with the Government of India. The claim of the assessee has been that the impugned expenditure falls within the scope of section 42(1) of the Act, whereas as per Revenue the impugned expenditure is merely development expenditure, which is outside the scope of deduction prescribed in section 42(1) of the Act.

7.4 Be that as it may, the aforesaid discussion would reveal that that the difference between the assessee and the Revenue is with regard to the scope of the expenditure envisaged in section

> *42(1) of the Act. The relevant discussion in the assessment order or even in the penalty order passed by Assessing Officer, does not reflect that the claim of the assessee was fanciful or was patently erroneous so as to suggest any concealment of income or furnishing in accurate particulars of income within the meaning of section 271(1)(c) of the Act. The mere claim made by the assessee which is found to be unsustainable by the Assessing Officer does not ipso-facto lead to a penalty under section 271(1)(c) of the Act as held by the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd.(supra). In our considered opinion in the present case the difference between the assessed and the reported income on the aforesaid aspect is based on varying perception of the scope of section 42(1) of the Act and it is not a case reflecting any concealment or furnishing of inaccurate particulars by the assessee within the meaning of section 271(1)(c) of the Act. Therefore, on this aspect of the matter also we find no error on the part of CIT(A) in deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the Act.*

5. It is clear from the order of the Tribunal as well as facts of the case during that year that no penalty is leviable for the disallowance of expenditure claimed u/s.52(1) of the IT Act. Facts and circumstances during the year under consideration are same, respectfully following the order of the Tribunal in assessee's own case for immediately preceding assessment year 2007-08, we do not find any merit for the penalty so imposed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 23/12/2016

Sd/-	**Sd/-**
(PAWAN SINGH)	**(R.C.SHARMA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 23/12/2016
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai