

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1067 OF 2018

Pr. Commissioner of Income Tax-2Appellant

V/s.

ICICI Bank Ltd.Respondent

Mr. Suresh Kumar a/w Dr. Dhanalakshmi Iyer for Appellant.
Ms A Vissanji for Respondent.

CORAM : K. R. SHRIRAM &
Dr. NEELA GOKHALE, JJ.
DATED : 13th MARCH 2024

PC. :

1 The following two substantial questions of law are proposed:

“a) Whether on the facts and in circumstances of the case and in law the Hon'ble ITAT is right in deleting the penalty u/s.271(1)(c) levied in respect of addition made of Rs.139,60,67,639/- on account of disallowance of claim of deduction u/s.36(i)(viii) holding that the variation in the deduction u/s.36(1)(viii) was due to the change in the business profit and it cannot be said that assessee has furnished inaccurate particulars of income.

b) Whether on the facts and in circumstances of the case and in law the Hon'ble ITAT is right in deleting the penalty u/s.271(1)(c) levied in respect of addition made of Rs.139,60,67,639/- on account of disallowance of claim of deduction u/s.36(i)(viii) holding that the assessee has made a bona-fide claim without discussing the merits of the reasons for variation in the business profit as worked out by the A.O.”

2 Assessee-respondent, a banking company filed its return of income for AY-1999-2000 on 31st December 1999 declaring total income of Rs.119,33,33,740/- under the normal provisions. Assessee also declared book profit of Rs.78,29,67,083/- under Section 115JA of the Income Tax Act 1961 (the Act). Subsequently, assessee filed revised return of income on 27th February 2001, declaring total income at Rs.46,53,59,236/- and book profit of Rs.102,15,58,970/-. The Assessing Officer (AO) completed the assessment by disallowing certain deductions.

3 Assessee challenged the assessment order before the Commissioner of Income Tax (Appeals) (CIT(A)) and thereafter before the ITAT. When assessee's appeal was pending before the ITAT, the AO issued a notice to assessee under Section 271(1)(c) of the Act and the allegation was the additions made in the assessment order were a result of furnishing of inaccurate particulars of income or concealment of income by assessee. Assessee's objections were rejected and the AO passed an order imposing penalty of Rs.48,86,23,673/- under Section 271(1)(c) of the Act. In the appeal filed by assessee, the CIT(A) deleted the penalty imposed by the AO. The Department challenged that order of CIT(A) before the ITAT and the ITAT upheld that finding of the CIT(A).

4 It is the case of revenue that in the return of income, assessee did not claim certain deductions, during the course of assessment proceedings. Assessee claimed such deductions and thereby has furnished inaccurate

particulars of income. It is department's case that only because assessee has offered income and not claimed deductions in the return of income would not absolve assessee from the liability of Section 271(1)(c) of the Act. The ITAT, in our view, correctly held that provisions of Section 271(1)(c) of the Act are not attracted. The ITAT was of the view and rightly so that assessee had made a bonafide claim under Section 36(1)(viii) as such deductions claimed is linked to the business profit. Only because there was variance in the deductions allowable due to change in determination of business profit, it cannot be said that assessee has furnished inaccurate particulars of income or concealed inaccurate particulars of income. As held by the Apex Court in *Commissioner of Income Tax Vs. Reliance Petro Products Pvt Ltd.*¹ if we accept the contention of revenue, then in case of every return where the claim sum is not accepted by the AO for any reason, assessee will invite penalty under Section 271(1)(c) of the Act. A mere making of the claim which is not sustainable in law by itself, will not amount to furnishing inaccurate particulars regarding the income of assessee, such claim made in the return cannot amount to be inaccurate particulars.

5 In the circumstances, in our view, no substantial questions of law arise.

6 Appeal dismissed.

(Dr. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

1 (2010) 322 ITR 158 (SC)